

## EXHIBIT 302 – A

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF OHIO  
3           EASTERN DIVISION

4                               -   -   -

5   IN RE:   NATIONAL               :   MDL NO. 2804  
6   PRESCRIPTION OPIATE :  
7   LITIGATION               :   

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7                               :   CASE NO.  
8   THIS DOCUMENT               :   1:17-MD-2804  
9   RELATES TO ALL CASES:

                                  :   Hon. Dan A.  
                                  :   Polster

10                               -   -   -

                              Saturday, August 4, 2018

11                               -   -   -

12   HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
13   CONFIDENTIALITY REVIEW

14                               -   -   -

15                               Videotaped deposition of  
16   DAVID MAY, taken pursuant to notice, was  
17   held at the law offices of Reed Smith,  
18   LLP, Three Logan Square, 1717 Arch  
19   Street, Philadelphia, Pennsylvania 19103,  
20   beginning at 9:01 a.m., on the above  
21   date, before Amanda Dee Maslynsky-Miller,  
22   a Certified Realtime Reporter.

19                               -   -   -

23                               GOLKOW LITIGATION SERVICES  
24                               877.370.3377 ph| 917.591.5672 fax  
                                  deps@golkow.com

Page 2	Page 4
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Page 3	Page 5
<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 COVINGTON &amp; BURLING LLP</p> <p>4 BY: EMILY KVESELIS, ESQUIRE</p> <p>5 850 Tenth Street, NW</p> <p>6 Suite 856N</p> <p>7 Washington, DC 20001</p> <p>8 202.662.5000</p> <p>9 ekveselis@cov.com</p> <p>10 Representing the Defendant,</p> <p>11 McKesson Corporation</p> <p>12</p> <p>13 MARCUS &amp; SHAPIRA LLP</p> <p>14 BY: JAMES F. ROSENBERG, ESQUIRE</p> <p>15 One Oxford Centre</p> <p>16 35th Floor</p> <p>17 Pittsburgh, PA 15219</p> <p>18 412.338.4683</p> <p>19 rosenberg@marcus-shapira</p> <p>20 Representing the Defendant,</p> <p>21 HBC Service Company</p> <p>22</p> <p>23 JONES DAY</p> <p>24 BY: SARAH G. CONWAY, ESQUIRE</p> <p>555 South Flower Street</p> <p>Los Angeles, California 90071</p> <p>(213) 489-3939</p> <p>sgconway@jonesday.com</p> <p>Representing the Defendant,</p> <p>Walmart</p>	<p>1 APPEARANCES: (Continued)</p> <p>2 VIA TELECONFERENCE:</p> <p>3</p> <p>4</p> <p>5 LOCKE LORD LLP</p> <p>6 BY: BRANDAN MONTMINY, ESQUIRE</p> <p>7 2200 Ross Avenue</p> <p>8 Suite 2800</p> <p>9 Dallas, Texas 75201</p> <p>10 (214) 740-8000</p> <p>11 brandan.montminy@lockelord.com</p> <p>12 Representing the Defendant,</p> <p>13 Henry Schein Medical Systems, Inc.</p> <p>14</p> <p>15 ROPES &amp; GRAY LLP</p> <p>16 BY: JESSICA SORICELLI, ESQUIRE</p> <p>17 BY: FEIFEI (ANDREA) REN, ESQUIRE</p> <p>18 1211 Avenue of the Americas</p> <p>19 New York, New York 10036</p> <p>20 (212) 596-9000</p> <p>21 Jessica.Soricelli@ropesgray.com</p> <p>22 Andrea.Ren@ropesgray.com</p> <p>23</p> <p>24 - and -</p> <p>BY: WILLIAM T. DAVISON, ESQUIRE</p> <p>Prudential Tower</p> <p>800 Boylston Street</p> <p>Boston, Massachusetts 02199</p> <p>(617) 951-7000</p> <p>William.Davison@ropesgray.com</p> <p>Representing the Defendant,</p> <p>Mallinckrodt</p>

Page 6										Page 8									
1 APPEARANCES: (Continued)										1 - - -									
2 VIA TELECONFERENCE:										2 I N D E X									
3										3 - - -									
4 MORGAN LEWIS & BOCKIUS, LLP										4									
5 BY: ELLIOT E. BROWN, ESQUIRE										5 Testimony of: DAVID MAY									
6 1111 Pennsylvania Ave. NW										6 By Mr. Pifko 13									
7 Washington, D.C. 20004										7									
8 (202) 739-3000										8 - - -									
9 elliot.brown@morganlewis.com										9 E X H I B I T S									
10 - and -										10 - - -									
11 BY: MONICA C. PEDROZA, ESQUIRE										11									
12 77 West Wacker Drive										12 NO. DESCRIPTION PAGE									
13 Chicago, Illinois 60601										13 AmerisourceBergen-May									
14 (312) 324-1000										14 Exhibit-1 ABDCMDL 151803-804 13									
15 Monica.pedroza@morganlewis.com										15 AmerisourceBergen-May									
16 Representing the Defendants,										16 Exhibit-2 Masters Pharmaceutical Versus									
17 Teva Pharmaceuticals, Inc.,										17 DEA Court Opinion,									
18 Cephalon, Inc., Watson										18 861.F. 3rd, 206, 2017 from									
19 Laboratories, Actavis LLC, and										19 The DC Circuit 39									
20 Actavis Pharma, Inc										20 AmerisourceBergen-May									
21										21 Exhibit-3 ABDCMDL 00156582-84 45									
22 JACKSON KELLY PLLC										22 AmerisourceBergen-May									
23 BY: SAMANTHA M. D'ANNA, ESQUIRE										23 Exhibit-4 ABDCMDL 00274105-118 116									
24 500 Lee Street East										24 AmerisourceBergen-May									
Suite 1600										25 Exhibit-5 ABDCMDL 00250024-063 153									
Charleston, WV 25301										26 AmerisourceBergen-May									
(304) 340-1347										27 Exhibit-6 ABDCMDL 00158544 159									
samantha.danna@jacksonkelly.com										28 AmerisourceBergen-May									
Representing the Defendant,										29 Exhibit-7 ABDCMDL 00168453-455 178									
Miami-Luken, Inc.										30									

Page 10				Page 12			
1	- - -			1	- - -		
2	E X H I B I T S			2	(It is hereby stipulated and		
3	- - -			3	agreed by and among counsel that		
4				4	sealing, filing and certification		
5	NO.	DESCRIPTION	PAGE	5	are waived; and that all		
6	AmerisourceBergen-May			6	objections, except as to the form		
7	Exhibit-19	ABDCMDL 00159841	325	7	of the question, will be reserved		
8	AmerisourceBergen-May			8	until the time of trial.)		
9	Exhibit-20	ABDCMDL 00142341-345	342	9	- - -		
10				10	VIDEO TECHNICIAN: We are		
11				11	now on the record. My name is		
12				12	David Lane, videographer for		
13				13	Golkow Litigation Services.		
14				14	Today's date is August 4th, 2018.		
15				15	Our time is 9:01 a.m.		
16				16	This deposition is taking		
17				17	place in Philadelphia,		
18				18	Pennsylvania, in the matter of		
19				19	National Prescription Opiate		
20				20	Litigation. Our deponent today is		
21				21	David May.		
22				22	Our counsel will be noted on		
23				23	the stenographic record. The		
24				24	court reporter today is Amanda		
Page 11				Page 13			
1	- - -			1	Miller and will now swear in our		
2	D E P O S I T I O N   S U P P O R T   I N D E X			2	witness.		
3	- - -			3	- - -		
4				4	DAVID MAY, after having been		
5	Direction to Witness	Not to Answer		5	duly sworn, was examined and		
6	Page Line	Page Line	Page Line	6	testified as follows:		
7	76	7		7	- - -		
8	122	1		8	VIDEO TECHNICIAN: Please		
9	123	21		9	begin.		
10	220	17		10	- - -		
11	Request for Production of Documents			11	EXAMINATION		
12	Page Line	Page Line	Page Line	12	- - -		
13	None			13	BY MR. PIFKO:		
14				14	Q. Good morning, Mr. May.		
15	Stipulations			15	A. Good morning.		
16	Page Line	Page Line	Page Line	16	Q. My name is Mark Pifko. I'm		
17	10	1		17	an attorney for the plaintiffs in this		
18				18	matter. I'm handing you what's marked as		
19				19	Exhibit Number 1.		
20	Question Marked			20	- - -		
21	Page Line	Page Line	Page Line	21	(Whereupon,		
22	None			22	AmerisourceBergen-May Exhibit-1,		
23				23	ABDCMDL 151803-804, was marked for		
24				24	identification.)		

<p style="text-align: right;">Page 14</p> <p>1               - - -</p> <p>2 BY MR. PIFKO:</p> <p>3           Q.   This is an e-mail, Bates</p> <p>4 labeled ABDCMDL 151803 through 804.</p> <p>5           There's various exchanges;</p> <p>6 you're one of the people on the</p> <p>7 exchanges. They are dated January 14th,</p> <p>8 2016.</p> <p>9           Please take a minute to</p> <p>10 review that and let me know when you're</p> <p>11 done.</p> <p>12          A.   Sure. Thank you.</p> <p>13          Q.   Have you seen this before?</p> <p>14          A.   I have.</p> <p>15          Q.   When was the last time you</p> <p>16 saw this?</p> <p>17          A.   It would have been on the</p> <p>18 date that is indicated by the e-mail,</p> <p>19 which would be, I guess, January 14th,</p> <p>20 2016.</p> <p>21          Q.   Do you recall this</p> <p>22 discussion?</p> <p>23          A.   I recall this exchange, yes.</p> <p>24          Q.   Is this a true and correct</p>	<p style="text-align: right;">Page 16</p> <p>1           order as suspicious, it's</p> <p>2 permanently rejected and never</p> <p>3 shipped.</p> <p>4 BY MR. PIFKO:</p> <p>5          Q.   So if you -- it's based on</p> <p>6 your understanding of the legal</p> <p>7 requirements that if you identify an</p> <p>8 order as suspicious, you cannot ship it,</p> <p>9 correct?</p> <p>10          MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12          THE WITNESS: It's my</p> <p>13 understanding of the law and the</p> <p>14 regulation and the expectation of</p> <p>15 the regulator.</p> <p>16 BY MR. PIFKO:</p> <p>17          Q.   To be clear, that if an</p> <p>18 order is suspicious, you cannot ship it,</p> <p>19 correct?</p> <p>20          A.   Correct.</p> <p>21          Q.   Do you know what these</p> <p>22 direct shipments are?</p> <p>23          A.   I have some knowledge of the</p> <p>24 direct shipments.</p>
<p style="text-align: right;">Page 15</p> <p>1 copy of the communications reflected</p> <p>2 here?</p> <p>3          A.   Yes, it is.</p> <p>4          Q.   I'd like to direct your</p> <p>5 attention to the first page. About</p> <p>6 halfway down the page, there's an e-mail</p> <p>7 from you. It says, 3:16 p.m. to Sharon</p> <p>8 Hartman.</p> <p>9           Do you see that part?</p> <p>10          A.   I do.</p> <p>11          Q.   There's a line you say right</p> <p>12 there, If an order is deemed suspicious,</p> <p>13 it can never be shipped.</p> <p>14           Do you see that?</p> <p>15          A.   I do.</p> <p>16          Q.   Why do you say that?</p> <p>17          MR. NICHOLAS: Object to the</p> <p>18 form.</p> <p>19           Go ahead.</p> <p>20          THE WITNESS: Under our</p> <p>21 program and our policy and our</p> <p>22 understanding of the regulation,</p> <p>23 and what the regulator expects</p> <p>24 from us, is when we declare an</p>	<p style="text-align: right;">Page 17</p> <p>1           In reading the back -- or,</p> <p>2 actually, the beginning of the e-mail</p> <p>3 chain, there is a refresher on here that</p> <p>4 explains what direct ships are.</p> <p>5          Q.   This is a situation where</p> <p>6 the order goes through</p> <p>7 AmerisourceBergen's order process but</p> <p>8 it's shipped directly from the</p> <p>9 manufacturer to the customer, correct?</p> <p>10          A.   Actually, my understanding</p> <p>11 of the direct ship is an order is placed</p> <p>12 by the customer directly to the</p> <p>13 manufacturer, AmerisourceBergen has no</p> <p>14 visibility to the placement of that</p> <p>15 order.</p> <p>16           The order is then shipped</p> <p>17 from the manufacturer directly to the</p> <p>18 customer, and we have no visibility of</p> <p>19 that process.</p> <p>20           What we do have visibility</p> <p>21 into is the financial transaction after</p> <p>22 it's completed. And our role in the</p> <p>23 process is simply billing the</p> <p>24 transaction.</p>

Page 18

[REDACTED]

Page 20

[REDACTED]

Page 19

[REDACTED]

Page 21

[REDACTED]

Page 24

1 we're talking about the period  
2 from 2015 forward; is that  
3 correct?  
4 MR. PIFKO: I'll get into  
5 some dates. I'm going to ask him.  
6 BY MR. PIFKO:  
7 Q. What is --  
8 MR. NICHOLAS: I know. But  
9 I just want to make sure the  
10 testimony --  
11 MR. PIFKO: The record is it  
12 is. You can't go back, he's  
13 already answered the question.  
14 MR. NICHOLAS: It's unclear  
15 and that's why I'm trying to  
16 clarify.  
17 MR. PIFKO: Well, it is what  
18 it is. We can't fix it  
19 retroactively.  
20 MR. NICHOLAS: Sure we can.  
21 MR. PIFKO: No, we can't.  
22 MR. NICHOLAS: You don't  
23 want to.  
24 BY MR. PIFKO:

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A horizontal bar chart titled 'U.S. should take action to address climate change'. The y-axis lists age groups: 18-29, 30-49, 50-64, 65+, and 'All adults'. The x-axis shows percentages from 0 to 100. For each age group, there are two bars: a blue bar for 'Total' and a red bar for 'Men'. The data is as follows:

Age Group	Total (%)	Men (%)
18-29	87	87
30-49	82	82
50-64	77	77
65+	70	70
All adults	76	76

20 BY MR. PIFKO:  
21 Q. You understand that you're  
22 designated to be the company's  
23 representative to testify about certain  
24 topics today, correct?



A horizontal bar chart titled 'U.S. should take action to address climate change' showing the percentage of respondents who believe the U.S. should take action to address climate change. The chart is broken down by age group (18-29, 30-49, 50-69, 70+) and gender (Male, Female). The y-axis lists the demographic groups, and the x-axis shows the percentage from 0 to 100. The bars are colored by age group: 18-29 (dark blue), 30-49 (medium blue), 50-69 (light blue), and 70+ (very light blue). The legend indicates that Male is represented by a light blue square and Female by a dark blue square.

Age Group	Gender	Percentage
18-29	Male	92%
	Female	95%
30-49	Male	88%
	Female	90%
50-69	Male	85%
	Female	87%
70+	Male	78%
	Female	80%

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Page 28

Page 29

Page 30	Page 32
<p>1 simple questions, but take your time.</p> <p>2 MR. NICHOLAS: While he's</p> <p>3 looking at the document, just to</p> <p>4 clarify the record, Mr. May is</p> <p>5 designated as a 30(b)(6) witness</p> <p>6 to testify through May 29th of</p> <p>7 2018.</p> <p>8 THE WITNESS: Okay.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. Okay. If you'd go to Page</p> <p>11 6. Tell me when you're there.</p> <p>12 A. Yes, I'm there.</p> <p>13 Q. It's got some letters, A,</p> <p>14 and it continues on through the next</p> <p>15 page, A through O.</p> <p>16 A. Yes.</p> <p>17 Q. Have you reviewed these</p> <p>18 topics?</p> <p>19 A. I have.</p> <p>20 Q. When was the first time that</p> <p>21 you saw these topics?</p> <p>22 A. They were presented to me by</p> <p>23 counsel.</p> <p>24 Q. When was the first time?</p>	<p>1 Q. Did you undertake any effort</p> <p>2 to familiarize yourself with the topics</p> <p>3 in O?</p> <p>4 A. I have not.</p> <p>5 Q. But you are prepared to talk</p> <p>6 about A through N today, from the time</p> <p>7 period from January 1st, 2015 to May</p> <p>8 29th, 2018?</p> <p>9 A. I am.</p> <p>10 Q. You were a DEA employee for</p> <p>11 some period of time, correct?</p> <p>12 A. Yes.</p> <p>13 Q. How long did you work for</p> <p>14 the DEA?</p> <p>15 A. I started working for DEA</p> <p>16 while I was in college, so over 30 years.</p> <p>17 Q. What -- when did you first</p> <p>18 start? What was the date when you first</p> <p>19 started working for the DEA?</p> <p>20 A. It was approximately June of</p> <p>21 1982, as a student intern. And I started</p> <p>22 my career as an agent in 1985, and was</p> <p>23 employed as an agent until I retired in</p> <p>24 2014.</p>
Page 31	Page 33
<p>1 A. Oh, when? Three weeks ago,</p> <p>2 possibly, approximately.</p> <p>3 Q. And do you understand that</p> <p>4 you're designated to speak on all of</p> <p>5 these topics from January 1st, 2015 to</p> <p>6 May 29th, 2018?</p> <p>7 MR. NICHOLAS: We covered</p> <p>8 yesterday that that's with the</p> <p>9 exception of letter O.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. With the exception of letter</p> <p>13 O, you're not here to testify about that?</p> <p>14 MR. NICHOLAS: Well, we've</p> <p>15 agreed that he's not here to</p> <p>16 testify about that.</p> <p>17 MR. PIFKO: I'm asking the</p> <p>18 witness.</p> <p>19 MR. NICHOLAS: Then I'll</p> <p>20 object to the question.</p> <p>21 THE WITNESS: Well,</p> <p>22 apparently there's an agreement,</p> <p>23 so I won't be talking about O.</p> <p>24 BY MR. PIFKO:</p>	<p>1 Q. When you retired in 2014,</p> <p>2 what was the position you held at the</p> <p>3 DEA?</p> <p>4 A. I was the assistant special</p> <p>5 agent in charge of the Atlanta field</p> <p>6 division.</p> <p>7 Q. Was that the highest</p> <p>8 position that you held when you were at</p> <p>9 the DEA?</p> <p>10 A. I had an equivalent grade</p> <p>11 but with a different title, assistant</p> <p>12 regional director in Europe, Africa and</p> <p>13 the Middle East. I also had a temporary</p> <p>14 grade at the same level while assigned to</p> <p>15 DEA headquarters as an acting section</p> <p>16 chief of our Europe and Middle Eastern</p> <p>17 section.</p> <p>18 Q. When were you acting section</p> <p>19 chief?</p> <p>20 A. It was during my assignment</p> <p>21 to DEA headquarters. So that would have</p> <p>22 been upon my return from Paris. I have</p> <p>23 to sort the years out.</p> <p>24 So '86 to '91, I was</p>

<p style="text-align: right;">Page 34</p> <p>1 assigned to the New York field division; 2 from '91 to '93, I was assigned to the 3 Marseilles resident office in France; 4 from '93 to '96, I was assigned to the 5 Paris country office. From 1996 to 1999, 6 I was assigned to DEA headquarters, that 7 was the acting section chief; from 1999 8 to 2002, I was handed a program, a 9 congressionally funded program, targeting 10 drug trafficking organizations across the 11 country. That ended in 2002, where I 12 became the head of the drug task force in 13 the city of Charlotte, North Carolina. 14 From that, I was assigned Rome, as 15 assistant regional director. And then 16 finally to Atlanta. 17 Q. And after concluding your 18 employment with the DEA in 2014, you then 19 went to join AmerisourceBergen, correct? 20 A. Correct. 21 Q. And what was your title when 22 you joined AmerisourceBergen? 23 A. Senior director of diversion 24 control.</p>	<p style="text-align: right;">Page 36</p> <p>1 specifically say that they will 2 not approve any specific programs 3 being run by regulators. 4 BY MR. PIFKO: 5 Q. And what do you mean by 6 that? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: In terms of 10 the -- 11 MR. NICHOLAS: And to the 12 scope. 13 Go ahead. 14 THE WITNESS: In terms of 15 the context to your question, I've 16 seen written documents by DEA, 17 including in their guidance 18 letters around the 2006, 2007 time 19 frame, where they say that they 20 will not approve specific systems 21 or programs that regulators have 22 in place. 23 That's my only context for 24 that question.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. What's your title now? 2 A. Vice president of diversion 3 control and security. 4 Q. Did you have any positions 5 in between those two positions? 6 A. I did not. 7 Q. Were your job 8 responsibilities essentially the same in 9 those two positions? 10 A. They are slightly different. 11 Q. What are the differences? 12 A. I assumed the security and 13 investigations profile in addition to the 14 diversion control profile within 15 corporate security and regulatory 16 affairs. 17 Q. Based on your experience 18 with the DEA, does the DEA tell companies 19 it regulates whether their practices are 20 in compliance with the law? 21 MR. NICHOLAS: Object to the 22 form. Object to the scope. 23 THE WITNESS: I have seen 24 statements by DEA where they</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. PIFKO: 2 Q. You said that they won't 3 approve specific systems or programs that 4 regulators have in place. 5 Do you mean that the 6 regulated have in place? 7 A. I do. 8 Q. So what you're saying is the 9 DEA does not approve the specific system 10 or program that a company may implement 11 in connection with regulations that DEA 12 enforces, correct? 13 MR. NICHOLAS: Object to the 14 form. Object to the scope. 15 You're outside of the witness's 16 time frame here, by a lot. 17 THE WITNESS: Again, the 18 only context I can put around this 19 is my review of documents from DEA 20 where -- and I will rely upon what 21 the document says, in terms of 22 what my understanding is, that 23 DEA -- DEA's position around this 24 issue.</p>

<p style="text-align: right;">Page 38</p> <p>1 BY MR. PIFKO:  2 Q. Okay. And what is your  3 understanding about what DEA's position  4 is?  5 MR. NICHOLAS: Object to the  6 form. Object to the scope. Same  7 objections.  8 THE WITNESS: Again, I would  9 rely upon the content of that  10 written guidance specifically that  11 DEA has in those documents that  12 they released; it was either 2006  13 or 2007. I believe it was  14 actually a 2007 document, where  15 they make a statement relative to  16 their not approving specific  17 programs of the regulated  18 community.  19 BY MR. PIFKO:  20 Q. In your experience as a DEA  21 agent for -- how many years?  22 A. Approximately 30.  23 Q. -- for 30 years, did you  24 ever tell a company, or somebody that was</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. PIFKO:  2 Q. I'm handing you what's  3 marked as Exhibit-2.  4 MR. PIFKO: He's going to  5 hand it to you in just a second.  6 For the record, it's a copy  7 of the Masters Pharmaceutical  8 versus DEA court opinion, 861 F.3d  9 206, 2017, from the DC circuit.  10 BY MR. PIFKO:  11 Q. It's got a couple paragraphs  12 highlighted that we wanted to call your  13 attention to. But take a minute to  14 review it.  15 Just, my first question  16 would just be that, have you seen this  17 opinion before?  18 MR. NICHOLAS: Can I just --  19 what we're looking at on the  20 screen is not the same as what's  21 in front of him.  22 MR. PIFKO: It should be.  23 MR. NICHOLAS: It looks like  24 a different document.</p>
<p style="text-align: right;">Page 39</p> <p>1 within your regulatory authority, that  2 what they were doing was approved?  3 MR. NICHOLAS: Object to the  4 form. Object to the scope.  5 THE WITNESS: So the  6 majority of my career, almost all  7 of my career, was on the  8 enforcement side of the agency.  9 And I had little to no interaction  10 with the regulated community.  11 BY MR. PIFKO:  12 Q. You were out there chasing  13 drug dealers?  14 A. I was out there  15 investigating drug trafficking  16 organizations, yes.  17 - - -  18 (Whereupon,  19 AmerisourceBergen-May Exhibit-2,  20 Masters Pharmaceutical Versus DEA  21 Court Opinion, 861 F.3d 206, 2017  22 from the DC Circuit, was marked  23 for identification.)  24 - - -</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. PIFKO: Let's go off the  2 record while we fix this.  3 VIDEO TECHNICIAN: Going off  4 the record. 9:33 a.m.  5 - - -  6 (Whereupon, a discussion off  7 the record occurred.)  8 - - -  9 VIDEO TECHNICIAN: We're  10 back on record. The time is 9:35  11 a.m.  12 BY MR. PIFKO:  13 Q. Okay, Mr. May, we've  14 resolved, and it appears that you have a  15 complete copy of the Masters  16 Pharmaceutical decision in front of you.  17 Please take a moment to  18 review it and let me know when you're  19 done.  20 My first question is just if  21 you've seen this before?  22 A. Yes, I've seen this before.  23 Q. When was the first time you  24 saw this?</p>

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1 A. I've seen it recently in  
2 preparation for today. And I may have  
3 seen it at other times during the course  
4 of my work, but I don't recall  
5 specifically when that was.  
6 Q. Okay. I'd like to direct  
7 you to Page 7, if you use the very bottom  
8 of the page. There's a paragraph with a  
9 bracketed 2 there.  
10 Do you see that paragraph at  
11 the bottom on the right?  
12 A. I do.  
13 Q. If you go a little bit down  
14 it says -- there's a sentence that says,  
15 The security requirement.  
16 Do you see that part?  
17 A. I do.  
18 Q. I'm going to read that to  
19 you.  
20 The security requirement, in  
21 quotes, at the heart of this case  
22 mandates that distributors, quote, design  
23 and operate a system to identify  
24 suspicious orders of controlled

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1 substances and report those orders to DEA  
2 (the reporting requirement) 21CFR Section  
3 1301.74(b).  
4 Do you see that?  
5 A. I do.  
6 Q. Do you understand that  
7 AmerisourceBergen is bound by the  
8 reporting requirement?  
9 MR. NICHOLAS: Object to the  
10 form.  
11 THE WITNESS: So I  
12 understand that AmerisourceBergen,  
13 as a wholesale distributor,  
14 registered as a wholesale  
15 distributor, is bound by certain  
16 provisions of The Controlled  
17 Substances Act, as well as the  
18 implementing regulations.  
19 And so in terms of any  
20 requirements imposed upon us, I  
21 would refer to the CFR as well as  
22 The Controlled Substance Act.  
23 BY MR. PIFKO:  
24 Q. As the vice president of

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1 diversion control at the company, you're  
2 responsible for the company's diversion  
3 control efforts?  
4 A. I am.  
5 Q. Do you understand that  
6 the -- in discharging your duties, that  
7 the company is bound by the law as set  
8 forth in this decision?  
9 MR. NICHOLAS: Object to the  
10 form.  
11 THE WITNESS: I understand  
12 in my role and my responsibility  
13 is one to meet the requirements of  
14 The Controlled Substances Act in  
15 implementing regulations that are  
16 relevant to the wholesale  
17 distributor. And I rely upon  
18 those, as opposed to this  
19 particular case.  
20 BY MR. PIFKO:  
21 Q. But you took it upon  
22 yourself, in connection with your role as  
23 the head of the diversion control  
24 division of the company, to familiarize

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1 yourself with this case when it came out?  
2 MR. NICHOLAS: Object to the  
3 form.  
4 THE WITNESS: At one point I  
5 reviewed this document, and more  
6 recently I reviewed it again.  
7 - - -  
8 (Whereupon,  
9 AmerisourceBergen-May Exhibit-3  
10 ABDCMDL 00156582-84, was marked  
11 for identification.)  
12 - - -  
13 BY MR. PIFKO:  
14 Q. I'm handing you what has  
15 been marked as Exhibit-3. Please take a  
16 minute to look at this and let me know  
17 when you're done.  
18 For the record, it's some  
19 e-mails, dated August 2nd, 2017. It's  
20 Bates labeled ABDCMDL 00156582 through  
21 84.  
22 A. Okay.  
23 Q. Are you familiar with this  
24 document?

<p style="text-align: right;">Page 46</p> <p>1 A. I am.</p> <p>2 Q. Is this a true and correct</p> <p>3 copy of the discussion reflected in this</p> <p>4 document?</p> <p>5 A. Yes, it is.</p> <p>6 Q. The first e-mail at the</p> <p>7 bottom is dated July 13th -- sorry, to be</p> <p>8 clear, so you know where I'm talking,</p> <p>9 it's on the 156583. It's an e-mail from</p> <p>10 you to Ruth Miller and Kristin Freitas,</p> <p>11 dated July 13, 2017.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. The subject of the -- the</p> <p>15 substance. The e-mail is on the next</p> <p>16 page, but do you see the header on the</p> <p>17 page I just referenced?</p> <p>18 A. Yes.</p> <p>19 Q. Looking back to Exhibit-2,</p> <p>20 the Masters decision, you see that on the</p> <p>21 first page it was decided on June 30th,</p> <p>22 2017.</p> <p>23 Do you agree?</p> <p>24 A. I'm sorry. You just lost</p>	<p style="text-align: right;">Page 48</p> <p>1 A. I'm familiar with the term.</p> <p>2 I just don't know precisely what -- the</p> <p>3 initials.</p> <p>4 Q. But that's a committee</p> <p>5 that's affiliated with the Healthcare</p> <p>6 Distribution Alliance, correct?</p> <p>7 A. Yes, yes.</p> <p>8 Q. And you have some</p> <p>9 involvement in interacting with the</p> <p>10 Healthcare Distribution Alliance?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Going back to this</p> <p>13 e-mail, you say, I have been meaning to</p> <p>14 reach out to you, as I am concerned with</p> <p>15 some of the language and reasoning found</p> <p>16 in the appellate court's recent decision</p> <p>17 in the Masters case, particularly</p> <p>18 surrounding suspicious orders.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. What were your concerns</p> <p>22 about the appellate court's recent</p> <p>23 decision in the Masters case with respect</p> <p>24 to suspicious orders?</p>
<p style="text-align: right;">Page 47</p> <p>1 me.</p> <p>2 Q. Go back to Exhibit-2, the</p> <p>3 decision.</p> <p>4 A. Yes. Thank you.</p> <p>5 Q. You see that it was</p> <p>6 decided -- on the first page on the left,</p> <p>7 it was decided June 30th, 2017. Agreed?</p> <p>8 A. I see that. Thank you.</p> <p>9 Q. And so you write to Ruth</p> <p>10 Miller and Christine Freitas or Kristin</p> <p>11 Freitas about two weeks later, agree?</p> <p>12 A. Yes.</p> <p>13 Q. And you say, Ruth, Kristin,</p> <p>14 sorry I could not be on the RAC call</p> <p>15 today, as I was traveling.</p> <p>16 RAC is regulatory affairs</p> <p>17 committee, correct?</p> <p>18 A. I'm not precisely certain</p> <p>19 what it stands for.</p> <p>20 Q. That's a committee that you</p> <p>21 serve on?</p> <p>22 A. I don't actually serve on</p> <p>23 this committee.</p> <p>24 Q. It's an had committee?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. To the best of my</p> <p>2 recollection, without seeing any other</p> <p>3 documents, other than what's in front of</p> <p>4 me here, there was information that was</p> <p>5 new information in the appellate court</p> <p>6 decision.</p> <p>7 There was some terminology</p> <p>8 which I had never seen before in any of</p> <p>9 the regulations or in The Controlled</p> <p>10 Substance Act. And that caused me to be</p> <p>11 concerned that there was this new</p> <p>12 language that wasn't in the law or</p> <p>13 regulation. And that was a general</p> <p>14 description of my concern.</p> <p>15 Q. What language was that?</p> <p>16 A. There was language relative</p> <p>17 to shipping requirement. And I had never</p> <p>18 seen the term, in all of my work at ABC,</p> <p>19 up until that point in my review of the</p> <p>20 regulation and the law, anything about</p> <p>21 shipping requirement.</p> <p>22 So that would be just an</p> <p>23 example. There may have been other</p> <p>24 concerns that I had.</p>



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1 Q. And it was your concern  
2 because you had never seen the phrase  
3 "shipping requirement"?  
4 MR. NICHOLAS: Object to the  
5 form. Asked and answered.  
6 THE WITNESS: My concern was  
7 that I had never seen the term  
8 "shipping requirement" in the  
9 applicable regulations or the law.  
10 And that its first appearance that  
11 I recall seeing was in the  
12 decision.  
13 BY MR. PIFKO:  
14 Q. I'm going to hand you  
15 another document that was marked  
16 yesterday Exhibit-6.  
17 For the record, it's a  
18 series of letters from the Department of  
19 Justice, DEA administration, which we  
20 call the Dear Registrant letters.  
21 Take a minute to review  
22 those.  
23 MR. NICHOLAS: While he's  
24 reviewing them, just so the record

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1 is clear, since you're about to  
2 ask him about documents that  
3 precede the period for which he is  
4 designated to testify as a  
5 30(b)(6) witness, he is now  
6 testifying in his individual  
7 capacity.  
8 MR. PIFKO: We have to make  
9 that judgment based on the  
10 question. But your position is  
11 noted.  
12 BY MR. PIFKO:  
13 Q. Are you familiar with these  
14 letters?  
15 A. I am.  
16 Q. If I call them the Dear  
17 Registrant letters, is that a term that  
18 you're familiar with?  
19 A. Yes.  
20 Q. Okay. When was the first  
21 time that you've seen these letters?  
22 A. I'm not precisely sure I  
23 could provide you a date. It's been some  
24 time.

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1 Q. Did you review these letters  
2 upon joining AmerisourceBergen?  
3 A. Yes.  
4 Q. And that was part of your  
5 effort to familiarize yourself with  
6 activity governing the diversion control  
7 department for which you were  
8 responsible?  
9 MR. NICHOLAS: Object to the  
10 form.  
11 THE WITNESS: Yes.  
12 BY MR. PIFKO:  
13 Q. So there's four letters in  
14 this packet. I want to turn your  
15 attention to the earliest of these  
16 letters, dated September 27th, 2006.  
17 For the record, that letter  
18 covers ABDCMDL 00269691 through 694.  
19 Tell me when you're there.  
20 A. I'm there, yes.  
21 Q. Are you familiar with this  
22 letter?  
23 A. Yes.  
24 Q. Let's turn to the second

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1 page of this letter.  
2 About two-thirds of the way  
3 down it says, Thus, in addition to  
4 reporting all suspicious orders, a  
5 distributor has a statutory  
6 responsibility to exercise due diligence  
7 to avoid filling suspicious orders that  
8 might be diverted into other than  
9 legitimate medical, scientific and  
10 industrial channels.  
11 Do you see that?  
12 A. I do.  
13 Q. Failure to exercise such due  
14 diligence could, as circumstances  
15 warrant, provide a statutory basis for  
16 revocation or suspension of a  
17 distributor's registration.  
18 Do you see that?  
19 MR. NICHOLAS: Is that a  
20 question?  
21 THE WITNESS: I do see it,  
22 yes.  
23 BY MR. PIFKO:  
24 Q. Do you have an understanding

<p style="text-align: right;">Page 54</p> <p>1 that that is saying, if you identify an  2 order as suspicious, you should not ship  3 it?</p> <p>4 MR. NICHOLAS: Object to the  5 form. In addition to which the  6 witness is being asked about a  7 topic for which he has not been  8 designated as a 30(b)(6) deponent.  9 So I'll permit him to  10 answer, but he's only answering in  11 his individual capacity.  12 THE WITNESS: Could you  13 repeat your question?  14 BY MR. PIFKO:  15 Q. The sentence I just read --  16 A. Yes.  17 Q. -- my question is, do you  18 understand this to be saying that if you  19 identify an order as suspicious, you  20 cannot ship it?  21 MR. NICHOLAS: Same  22 objection.  23 THE WITNESS: So in current  24 state, under our program, if we</p>	<p style="text-align: right;">Page 56</p> <p>1 AmerisourceBergen.  2 BY MR. PIFKO:  3 Q. And I just want to know if,  4 when you see this language, you  5 understand that that's what this language  6 is saying? It's saying, if you identify  7 an order as suspicious, do not ship it.  8 MR. NICHOLAS: Object to the  9 form. Same objection. Third time  10 you've asked him.  11 THE WITNESS: The law and  12 the regulation requires us to  13 reject or report suspicious  14 orders. They are, thereby, not  15 shipped.  16 If this says the same thing,  17 that -- and it agrees with the law  18 and the regulation, then I would  19 let the document stand on its own.  20 BY MR. PIFKO:  21 Q. That's your understanding of  22 the document?  23 MR. NICHOLAS: Object to the  24 form. He's answered the question</p>
<p style="text-align: right;">Page 55</p> <p>1 identify an order as suspicious,  2 we don't ship. It's rejected,  3 it's not shipped and it's reported  4 to DEA.  5 BY MR. PIFKO:  6 Q. Okay. I didn't ask you  7 about what your program was. I'm asking  8 you about this letter right now.  9 And my question is, do you  10 understand this language here to be  11 saying that if an order is deemed to be  12 suspicious, it cannot be shipped?  13 MR. NICHOLAS: Same  14 objection.  15 THE WITNESS: And, again, I  16 view these letters not as I view  17 the law and the regulation. It's  18 additional information that's  19 provided by DEA.  20 My understanding of the law  21 and regulation says that if we  22 identify an order as suspicious,  23 we should reject it and report it.  24 That's what we do at</p>	<p style="text-align: right;">Page 57</p> <p>1 four times.  2 MR. PIFKO: It's been asked.  3 It hasn't been answered.  4 MR. NICHOLAS: No, it has  5 been answered.  6 BY MR. PIFKO:  7 Q. I'm just trying to get --  8 sir, I'm just trying to get your  9 understanding of the document. I  10 appreciate your explanation of the law.  11 I'm just trying to get --  12 when you read this sentence, do you agree  13 that that's what it says? That's all I'm  14 asking you.  15 MR. NICHOLAS: Object to the  16 form. Object to the repeated  17 question, since he's answered it.  18 THE WITNESS: And, again, my  19 response would be the same.  20 That I rely on the  21 regulation and the law in terms of  22 how we carry out our  23 responsibility relative to  24 suspicious orders. And at</p>



<p style="text-align: right;">Page 58</p> <p>1 AmerisourceBergen, when we 2 identify a suspicious order, it's 3 rejected and reported to DEA. 4 BY MR. PIFKO: 5 Q. When you read this 6 sentence -- can you read this sentence to 7 me out loud, please? 8 A. Sure. 9 Q. I mean, that paragraph. 10 A. Sure. 11 MR. NICHOLAS: Can I have 12 the question repeated, please? 13 I'm sorry. 14 MR. PIFKO: I just asked him 15 to read the paragraph aloud. 16 MR. NICHOLAS: Okay. You 17 want him to read it out loud. 18 Go ahead. 19 THE WITNESS: Thus, in 20 addition to reporting all 21 suspicious orders, a distributor 22 has a statutory responsibility to 23 exercise due diligence to avoid 24 filling suspicious orders that</p>	<p style="text-align: right;">Page 60</p> <p>1 what this means? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: Again, in 5 terms of suspicious orders, my 6 understanding of the law and 7 regulation requires us to reject 8 them, cancel them, and report them 9 to DEA. 10 BY MR. PIFKO: 11 Q. And that's what this is 12 saying here, correct? 13 MR. NICHOLAS: Object to the 14 form. The witness has answered 15 this a number of times. Now 16 you're just trying to put words in 17 his mouth. So I'll object. 18 THE WITNESS: Again, I rely 19 on the law and the regulation 20 relative to suspicious orders. 21 MR. PIFKO: The record will 22 reflect that the witness is 23 unwilling to answer my question. 24 MR. NICHOLAS: Let the</p>
<p style="text-align: right;">Page 59</p> <p>1 might be diverted into other than 2 legitimate, medical, scientific 3 and industrial channels. Failure 4 to exercise such due diligence 5 could, as circumstances warrant, 6 provide a statutory basis for 7 revocation or suspension of a 8 distributor's registration. 9 BY MR. PIFKO: 10 Q. What does that mean to you? 11 MR. NICHOLAS: Object to the 12 form. Asked and answered five 13 times. Outside the scope. 14 THE WITNESS: Again, I 15 don't -- I don't think I'm the 16 right person to try to interpret 17 what the meaning is of this 18 sentence that was written by 19 somebody else. 20 And I would rely upon my 21 previous answer relative to 22 suspicious orders. 23 BY MR. PIFKO: 24 Q. You're unable to tell me</p>	<p style="text-align: right;">Page 61</p> <p>1 record reflect that the witness 2 has answered the question. And 3 the commentary about it is totally 4 inappropriate. 5 BY MR. PIFKO: 6 Q. Staying on this document, I 7 want to direct your attention to the 8 letter dated December 27th, 2007. That's 9 ABCDCMDL 00269685. 10 Are you there? 11 A. Yes. 12 Q. Second paragraph, at the 13 bottom, it says, Accordingly, DEA does 14 not approve or otherwise endorse any 15 specific system for reporting suspicious 16 orders. Past communications with DEA, 17 whether implicit or explicit, that could 18 be construed as approval of a particular 19 system for reporting suspicious orders 20 should no longer be taken to mean that 21 DEA approves a specific system. 22 Do you see that? 23 A. I do. 24 Q. When I asked you earlier</p>

<p style="text-align: right;">Page 62</p> <p>1 about DEA approving conduct by regulated 2 entities, is that what you were referring 3 to?</p> <p>4 A. Yes.</p> <p>5 Q. And that's consistent with 6 your understanding of the DEA's policy?</p> <p>7 MR. NICHOLAS: Object to the 8 form. Outside the scope. He's 9 testifying as an individual.</p> <p>10 THE WITNESS: Relative to it 11 being consistent with DEA policy, 12 I would have to say that I'm not 13 familiar with DEA's specific 14 written policy around this issue.</p> <p>15 And I -- my context of my 16 response was strictly relative to 17 this particular statement.</p> <p>18 BY MR. PIFKO:</p> <p>19 Q. When you joined 20 AmerisourceBergen and reviewed these 21 letters to familiarize yourself with 22 them, did you understand this to be DEA's 23 position concerning the activities of 24 preventing diversion?</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. But you understood it, 3 correct?</p> <p>4 MR. NICHOLAS: Object to the 5 form.</p> <p>6 THE WITNESS: I read all of 7 the documents.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Did you understand them?</p> <p>10 MR. NICHOLAS: Object to the 11 form.</p> <p>12 THE WITNESS: I'm not sure I 13 understand your question.</p> <p>14 Did I understand the written 15 documents?</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Yes.</p> <p>18 A. To the extent that I can 19 read the documents, yes, I can read the 20 documents.</p> <p>21 Q. And you understood them when 22 you read them?</p> <p>23 MR. NICHOLAS: Object to the 24 form.</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. NICHOLAS: Object to the 2 form. Outside the scope.</p> <p>3 THE WITNESS: I'm not sure I 4 understand your question. If you 5 wouldn't mind repeating it, thank 6 you.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. I'm just asking, basically, 9 when you came into the company in 2014 -- 10 and you reviewed these letters, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And you saw this, 13 this provision, right?</p> <p>14 A. Yes.</p> <p>15 Q. And you understood, when you 16 joined the company, that this was the 17 DEA's position, correct?</p> <p>18 MR. NICHOLAS: Object to the 19 form.</p> <p>20 THE WITNESS: Again, I 21 familiarized myself with all of 22 these documents, including this 23 one statement. And I would let 24 the statement speak for itself.</p>	<p style="text-align: right;">Page 65</p> <p>1 THE WITNESS: I believe I 2 can read the documents, yes.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. And when you read them, you 5 can understand them?</p> <p>6 A. I have a reading 7 compensation, I guess.</p> <p>8 MR. NICHOLAS: Hold on.</p> <p>9 Object to the form.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. You read them and understand 12 them, correct? That's all I'm trying to 13 get -- you're saying "I read them." But 14 I just want to be clear that -- reading 15 and understanding are different things.</p> <p>16 So when you read them, you 17 understood what you read?</p> <p>18 MR. NICHOLAS: Object to the 19 form.</p> <p>20 THE WITNESS: So when I read 21 a document, for reading 22 comprehension, I understand the 23 document. I guess that's why I 24 was a little confused.</p>

<p style="text-align: right;">Page 66</p> <p>1 BY MR. PIFKO: 2 Q. No problem. It's part of 3 the deposition process that we have to be 4 clear about our words sometimes. 5 A. Sure. I appreciate it. 6 Q. So you had reading 7 comprehension with respect to these 8 documents? I just want to confirm that. 9 A. Correct. Yes. Thank you. 10 Q. Okay. Let's go back to 11 Exhibit-3. I want to go to Page 156584. 12 Tell me when you're there. 13 A. I am there. 14 Q. You say, I have had 15 discussions at my company and we think it 16 would be a good idea to have a meeting 17 with DEA to raise our concerns and get 18 further clarification from them, 19 particularly as it relates to reporting 20 suspicious orders. 21 Do you see that? 22 A. I do. 23 Q. What did you mean by that? 24 A. Again, to the best of my</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. What specifically did you 2 want to address with the DEA? 3 MR. NICHOLAS: Objection. 4 Asked and answered several times 5 now. 6 THE WITNESS: Again, it was 7 the shipping requirement 8 statement, to my recollection at 9 this point, that was what I was 10 concerned with. There may have 11 been other things that, looking at 12 the -- just at this e-mail that -- 13 that I could have had a concern 14 with. 15 But at this time, looking at 16 this, that was my major concern. 17 BY MR. PIFKO: 18 Q. So we have the opinion in 19 front of you, Exhibit-2. 20 Can you direct me to the 21 portion of the opinion that you're saying 22 that you were concerned about? 23 MR. NICHOLAS: Well -- 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 67</p> <p>1 recollection, and seeing no other 2 documents, other than this particular 3 e-mail chain -- and I would refer back to 4 my prior response on a similar question, 5 and that is, I was seeing language in the 6 decision that I had not seen before in 7 the regulation and the law. 8 And that's -- without being 9 more specific than that, that was what 10 my -- what I recall to be my general 11 concern at that time. 12 Q. What did you want to get 13 clarification from the DEA about? 14 MR. NICHOLAS: Objection. 15 Asked and answered. Object to the 16 form. 17 THE WITNESS: Again, just to 18 repeat myself, where I saw that 19 there were new language or 20 different language than the 21 regulation or the laws, I thought 22 that having a meeting with DEA, we 23 could address those issues. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Take your time. 2 MR. NICHOLAS: -- I'll 3 object to the form. But now he's 4 going to have to read the entire 5 opinion while we sit here. 6 Is that what you want him to 7 do? 8 BY MR. PIFKO: 9 Q. Are you able to direct me to 10 the portion of the opinion that you were 11 concerned about? 12 A. I can flip through the 13 document and try to find it, or I can 14 read the whole document. I'm happy to 15 flip through it to try to find the 16 reference to shipping requirement. 17 Q. Well -- 18 A. If I don't find it by 19 flipping through it, I'll have to read 20 the whole document. 21 Q. We had attempted to give you 22 a highlighted version, but let's go back 23 to Page 7. 24 A. I am on Page 7.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. Okay. There's a section 2 there, The reporting requirement. 3 Do you see that? We read 4 that? 5 A. In Paragraph 2? 6 Q. Yes. On the bottom there. 7 A. Yes. 8 Q. Okay. If you turn to the 9 next page, continuing through that 10 paragraph, it says, Once a distributor 11 has reported a suspicious order, it must 12 make one of two choices: Decline to ship 13 the order, or conduct some due diligence. 14 And if it is able to determine that the 15 order is not likely to be diverted into 16 illegal channels, ship the order (the 17 shipping requirement). 18 Do you see that? 19 A. Yes, I do. 20 Q. Is this what you were 21 talking about? 22 MR. NICHOLAS: Object to the 23 form. 24 Go ahead.</p>	<p style="text-align: right;">Page 72</p> <p>1 order somehow differently. And 2 that would be -- that was part of 3 my concern. 4 BY MR. PIFKO: 5 Q. And in what way do you mean 6 you could "treat it differently"? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: It suggests 10 that you can determine an order 11 suspicious, I guess, and then 12 determine it's not suspicious and 13 ship it. 14 And, again, that's a 15 contradiction to what my 16 understanding of what the 17 regulation and the law requires. 18 BY MR. PIFKO: 19 Q. Because it's your 20 understanding that once an order is 21 suspicious, it cannot be shipped, 22 correct? 23 MR. NICHOLAS: Object to the 24 form.</p>
<p style="text-align: right;">Page 71</p> <p>1 THE WITNESS: It is. 2 BY MR. PIFKO: 3 Q. What, specifically, was your 4 concern with this language? 5 MR. NICHOLAS: Object to the 6 form. Asked and answered. 7 THE WITNESS: It's 8 contradictory. And it's 9 contradictory to my understanding 10 of what the regulation, the 11 regulations require. 12 As I stated, when 13 AmerisourceBergen determines, 14 after reviewing an order, that 15 it's suspicious, it's forever 16 rejected and it's reported to DEA. 17 So under our program, there 18 is no other choice. If that order 19 is deemed suspicious, then it's 20 reported to the DEA and it's 21 rejected. 22 And, here, that -- there 23 seems to offer another alternative 24 where you can treat a suspicious</p>	<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: Under ABC's 2 program, which is designed to meet 3 the requirements of the law and 4 the regulation, once we identify 5 an order as suspicious, it's 6 rejected and reported as 7 suspicious. 8 BY MR. PIFKO: 9 Q. Let's go back to -- just to 10 be clear, does that summarize your 11 concerns that we were just talking about 12 when we were looking at the e-mail? 13 MR. NICHOLAS: Object to the 14 form. It mischaracterizes the 15 testimony as well. 16 THE WITNESS: Again, in the 17 context of this one e-mail, with 18 no other context and based upon my 19 recollection of the e-mail events, 20 that's one of the concerns. 21 There may have been others 22 that I'm not recalling at this 23 time. 24 BY MR. PIFKO:</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. Understood. Going back to 2 the e-mail, Exhibit-3, you say, I have 3 not yet approached my colleagues at 4 Cardinal or McKesson yet, but I am 5 confident we all share similar concerns. 6 Do you see that? 7 A. I'll try to get to that. Is 8 that on the first -- 9 Q. It's on the last page. 10 A. Last page. Okay, yes. I 11 see that. 12 Q. Did you discuss this issue 13 with people at Cardinal and McKesson? 14 MS. KVESELIS: Objection. 15 THE WITNESS: In the context 16 of this MDL, I've been provided 17 the opportunity to meet with my 18 colleagues at Cardinal and 19 McKesson where we discussed 20 general topics related to 21 diversion control. 22 BY MR. PIFKO: 23 Q. Well, let's back up. I'm 24 just talking about the time period of --</p>	<p style="text-align: right;">Page 76</p> <p>1 meaning communications that 2 included attorneys or 3 communications that were -- and, 4 additionally, that may have been 5 communications that may have been 6 court sanctioned or court ordered. 7 So I will instruct you not 8 to answer to the extent -- to the 9 extent there were attorneys 10 involved, attorney communications 11 involved. 12 MS. KVESELIS: Objection to 13 form. 14 MR. PIFKO: You can only 15 have one objection for you guys, 16 so you're going to have to pick 17 who is making the objections. 18 MR. NICHOLAS: It's mine. 19 MR. PIFKO: Okay. 20 MS. KVESELIS: You can 21 object on privilege grounds and 22 I'm objecting on form. 23 MR. PIFKO: You can't. You 24 can't. Only one -- the protocol</p>
<p style="text-align: right;">Page 75</p> <p>1 specifically of this e-mail, not as a 2 general matter. 3 So my question is, you wrote 4 them -- you wrote this e-mail in July 5 13th, 2017 and you talk about approaching 6 colleagues at those two companies. And 7 my question is more specific than that, 8 in that on or around that time did you 9 specifically reach out to anyone at 10 Cardinal or McKesson to discuss the 11 Masters decision? 12 A. Not -- 13 MS. KVESELIS: Objection. 14 THE WITNESS: Not to my 15 recollection, no. 16 BY MR. PIFKO: 17 Q. At some point later did you 18 reach out to people at Cardinal and 19 McKesson to discuss this? 20 MR. NICHOLAS: I'm going to 21 interpose, not just an objection 22 but an instruction not to respond 23 to this, to the extent it involves 24 the attorney-client privilege,</p>	<p style="text-align: right;">Page 77</p> <p>1 is clear, only one objection 2 stands. Tell me which of your -- 3 which objection stands. 4 MR. NICHOLAS: Well, she's 5 counsel for another party. 6 MR. PIFKO: It doesn't 7 matter. The protocol is specific, 8 it says only one objection. Pick 9 one. 10 MR. DAVISON: That's not 11 correct. 12 MR. NICHOLAS: I didn't 13 think that's what the protocol 14 said. That's why I'm asking. We 15 can look it up, though. 16 MR. PIFKO: This isn't a big 17 deal. Next time we take a break, 18 we'll get it clarified. 19 MR. NICHOLAS: Well, if 20 you'd like, if it will make 21 everyone feel better, I will add 22 an objection to the form to my 23 objection. 24 MR. PIFKO: Done.</p>



<p style="text-align: right;">Page 78</p> <p>1 MR. NICHOLAS: And scope.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Now that we've had all of</p> <p>4 this discussion, let's get back to the</p> <p>5 question. And I'll ask it in a different</p> <p>6 way so we can get clarity.</p> <p>7 My question was, aside from</p> <p>8 communications where counsel was present,</p> <p>9 did you reach out to McKesson or Cardinal</p> <p>10 to discuss the Masters decision?</p> <p>11 MS. KVESELIS: Objection to</p> <p>12 form.</p> <p>13 THE WITNESS: I did not</p> <p>14 reach out, to the best of my</p> <p>15 recollection, to Cardinal or</p> <p>16 McKesson. In fact, this meeting</p> <p>17 with DEA that was anticipated and</p> <p>18 discussed never took place.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. Let's go to the first page</p> <p>21 of the e-mail, 156582.</p> <p>22 Are you there?</p> <p>23 A. I am.</p> <p>24 Q. You say, I have reached out</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes, I agree.</p> <p>2 Q. Is there someone at McKesson</p> <p>3 that you typically would -- your main</p> <p>4 contact you would reach out to, if you</p> <p>5 were going to call them?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Again, I don't</p> <p>9 have any recollection of reaching</p> <p>10 out. So I haven't -- I have --</p> <p>11 don't know who that would have</p> <p>12 been a reference to, if, in fact,</p> <p>13 I reached out.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Do you interact with</p> <p>16 McKesson in connection with the had?</p> <p>17 MS. KVESELIS: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: There are</p> <p>20 phone calls with the had that the</p> <p>21 distributors participate in,</p> <p>22 including myself. And there are</p> <p>23 other representatives from other</p> <p>24 wholesalers, including McKesson</p>
<p style="text-align: right;">Page 79</p> <p>1 to McKesson and will do the same with</p> <p>2 Cardinal and will get back to you when I</p> <p>3 have their responses.</p> <p>4 Do you see that? Sorry, on</p> <p>5 the top of the e-mail.</p> <p>6 A. Yes, I'm just trying to read</p> <p>7 that specific e-mail.</p> <p>8 Okay. I see that.</p> <p>9 Q. It says, I have reached out</p> <p>10 to McKesson -- we just read that, okay?</p> <p>11 A. Yes.</p> <p>12 Q. Who did you reach out to at</p> <p>13 McKesson?</p> <p>14 MS. KVESELIS: Objection to</p> <p>15 form.</p> <p>16 THE WITNESS: And, again, I</p> <p>17 don't have a recollection of</p> <p>18 specifically reaching out to</p> <p>19 McKesson to set up any meeting.</p> <p>20 And no meeting ever took place.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. Understood. But you say</p> <p>23 here that you reached out to McKesson,</p> <p>24 agree?</p>	<p style="text-align: right;">Page 81</p> <p>1 and Cardinal.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Do you know any of the other</p> <p>4 representatives from McKesson and</p> <p>5 Cardinal who participate?</p> <p>6 MS. KVESELIS: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: I do know some</p> <p>9 individuals who I've met at</p> <p>10 McKesson, but don't know</p> <p>11 specifically who was on those</p> <p>12 phone calls. And it changes from</p> <p>13 time to time.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Who have you met from</p> <p>16 McKesson?</p> <p>17 MS. KVESELIS: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: A couple of</p> <p>20 individuals. Gary Boggs being one</p> <p>21 of them.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. He's another DEA agent,</p> <p>24 correct? Former DEA agent?</p>

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1 A. He is.  
2 Q. Do you know him from working  
3 at the DEA?  
4 A. Never met him before until  
5 we both were working at these companies.  
6 Q. Anyone else from McKesson  
7 that you've met?  
8 MS. KVESELIS: Objection to  
9 form.  
10 THE WITNESS: During the  
11 course of the last four and-a-half  
12 years at the various had meetings,  
13 I'm sure I've met other Cardinal,  
14 McKesson representatives.  
15 But I couldn't list all  
16 their names, no.  
17 BY MR. PIFKO:  
18 Q. Can you identify any  
19 Cardinal representatives that you've met?  
20 A. I would respond the same  
21 way. I've met several over time and at  
22 different meetings. I don't have all  
23 their names off the top of my head.  
24 Q. Okay. You say in the same

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1 portion of the e-mail, I don't want to  
2 wait too long to make the specific  
3 request (and want it on the record, in  
4 quotes, that we are seeking clarification  
5 in this area).  
6 Do you see that?  
7 A. I do.  
8 Q. Why did you want it on the  
9 record that you were seeking  
10 clarification in this area?  
11 A. I thought the subject was  
12 important enough to be raised with the  
13 DEA. And so having it as documentation  
14 because of its importance, I thought,  
15 would be important.  
16 Q. You wanted it documented  
17 because you wanted it clear that the  
18 company was reaching out to seek  
19 clarification?  
20 MR. NICHOLAS: Object to the  
21 form.  
22 THE WITNESS: I wanted it to  
23 be documented because I thought it  
24 was an important matter.

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1 BY MR. PIFKO:  
2 Q. You mention Demetra Ashley  
3 here.  
4 Do you see that?  
5 A. I do.  
6 Q. Who is she?  
7 A. She was, at that time, I  
8 believe, working as the acting deputy  
9 administrator for diversion control.  
10 Q. Can you read the first  
11 sentence of that first paragraph in your  
12 3:11 p.m. e-mail aloud, please?  
13 A. So where it starts, I know  
14 Demetra?  
15 Q. Exactly, yes.  
16 A. I know Demetra and, quite  
17 frankly, I would prefer to wait until  
18 Administrator Rosenberg names a  
19 replacement for Millione to have the  
20 meeting.  
21 Q. What did you mean by that?  
22 A. Having someone in an acting  
23 capacity at DEA, they don't always have  
24 the authority of the position itself.

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1 And I felt that it would be more  
2 appropriate to talk to a  
3 permanent-position employee that was  
4 occupying that particular position as  
5 opposed to somebody that maybe didn't  
6 carry the full weight of the office.  
7 MR. PIFKO: With that, we  
8 can take a break.  
9 VIDEO TECHNICIAN: Going off  
10 the record. 10:19 a.m.  
11 - - -  
12 (Whereupon, a brief recess  
13 was taken.)  
14 - - -  
15 VIDEO TECHNICIAN: We're  
16 back on the record. The time is  
17 10:40 a.m.  
18 BY MR. PIFKO:  
19 Q. We didn't discuss this  
20 before we started, but under the rules of  
21 law governing this case, you are not  
22 permitted to discuss the substance of  
23 your deposition during breaks.  
24 During the last break, did

<p style="text-align: right;">Page 86</p> <p>1 you discuss the substance of your  2 deposition with counsel?  3 A. No.  4 Q. And we have an agreement  5 that you're not going to be doing that  6 going forward either?  7 A. Yes.  8 Q. Do you have an understanding  9 of the purpose --  10 MR. NICHOLAS: Somebody is  11 not on mute on the phone, if you  12 guys could just mute your phone.  13 Thanks.  14 BY MR. PIFKO:  15 Q. Let me restart that.  16 You understand that  17 AmerisourceBergen is a registrant under  18 The Controlled Substances Act, correct?  19 A. Yes.  20 Q. And you understand that, as  21 a registrant, AmerisourceBergen has a  22 duty to prevent -- to maintain effective  23 controls to prevent diversion, correct?  24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 88</p> <p>1 A. There are a couple different  2 types of diversion.  3 We're not talking about  4 contract diversion here, we're talking  5 about diversion of controlled substances?  6 Q. Correct.  7 A. Really, in a very general  8 description, I would say that diversion  9 takes place any time the legitimate  10 intended -- the legitimate intended  11 prescribing and use of a controlled  12 substance is not met, that somehow the  13 controlled substance is not used for the  14 legitimate medical purposes for what it  15 is intended, in a very general way.  16 Q. Do you understand the  17 concept, under The Controlled Substances  18 Act, of the closed system of  19 distribution?  20 A. I do.  21 Q. What is your understanding  22 of that?  23 A. With the passage of the  24 Controlled Substance Act, there was the</p>
<p style="text-align: right;">Page 87</p> <p>1 form.  2 THE WITNESS: Yes.  3 BY MR. PIFKO:  4 Q. Do you understand why the  5 law wants you to maintain effective  6 controls to prevent diversion?  7 MR. NICHOLAS: Object to the  8 form. Outside the scope.  9 I assume you're asking him  10 this question as an individual at  11 this point, in any event. But I  12 object to the form of the  13 question.  14 THE WITNESS: Could you  15 repeat your question, please?  16 BY MR. PIFKO:  17 Q. What's diversion?  18 MR. NICHOLAS: Object to the  19 form.  20 THE WITNESS: Diversion in  21 the context of the pharmaceutical  22 industry?  23 BY MR. PIFKO:  24 Q. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 design of a closed system of distribution  2 of controlled substances. And the system  3 would be closed effectively by requiring  4 anybody within that system to have a DEA  5 registration; so whether you're a  6 manufacturer, a distributor,  7 practitioner, pharmacist.  8 The goal of -- the goal of  9 the closed system is to create this body  10 of registered entities that, by getting  11 that registration, would give you the  12 authority and permission to carry out  13 whatever that function was that you had  14 within that registrant community.  15 Q. And you understand that  16 along with authority to carry out that  17 function, you also have certain legal and  18 regulatory obligations that you must  19 comply with, correct?  20 MR. NICHOLAS: Object to the  21 form.  22 THE WITNESS: That  23 AmerisourceBergen has, as a  24 registrant, wholesale distributor,</p>



<p style="text-align: right;">Page 90</p> <p>1 has certain requirements imposed 2 upon it, yes. 3 BY MR. PIFKO: 4 Q. As a result of being a 5 registrant? 6 A. Yes. 7 Q. And one of those 8 requirements is to maintain effective 9 controls to prevent diversion, correct? 10 MR. NICHOLAS: Object to the 11 form. 12 THE WITNESS: Yes. 13 BY MR. PIFKO: 14 Q. Let's just -- are you 15 familiar with the scheduling of 16 prescription drugs or drugs in general, 17 substances? 18 MR. NICHOLAS: Object to the 19 form. Outside the scope. 20 THE WITNESS: Referring to 21 the DEA scheduling? 22 BY MR. PIFKO: 23 Q. Yes. 24 A. Yes. I'm generally familiar</p>	<p style="text-align: right;">Page 92</p> <p>1 description. 2 BY MR. PIFKO: 3 Q. Do you understand a Schedule 4 I substance has -- the U.S. government 5 has said it has no legitimate medical 6 purpose? Do you understand that? 7 MR. NICHOLAS: Objection. 8 Outside the scope. 9 THE WITNESS: I'm familiar 10 with some of the substances within 11 Schedule I that are illegal drugs. 12 BY MR. PIFKO: 13 Q. Well, let's focus on 14 Schedule II substances. 15 Do you understand that the 16 litigation for which we're here today 17 concerns opioid products? 18 A. Yes. 19 Q. Can you tell me what an 20 opioid product is? 21 A. Again, there is -- there are 22 opioids and there are opiates. There 23 tends to be some confusion. I think most 24 people today generally refer to opioids.</p>
<p style="text-align: right;">Page 91</p> <p>1 with it. 2 Q. Do you know what -- a 3 substance that's classified as a Schedule 4 II, what's that mean? 5 MR. NICHOLAS: Same 6 objection. 7 THE WITNESS: Generally, 8 looking at the scheduling of 9 controlled substances, generally 10 speaking, the design of the 11 schedule takes into effect -- or 12 takes into consideration whether a 13 product has some medical value and 14 it takes in the potential of abuse 15 of a product. 16 And so moving from the lower 17 schedule to a higher schedule, you 18 would generally see a higher abuse 19 potential of the products within 20 those different schedules. And, 21 conversely, you would see less 22 medical use and more medical use 23 as you increase in schedules. 24 That's a general</p>	<p style="text-align: right;">Page 93</p> <p>1 Opiates would be those 2 products that have the natural derivative 3 coming from a natural plant, whereas 4 opioids would have a synthetic creation 5 and resemble the natural ingredient. 6 And so talking about 7 opioids, you would be talking about 8 oxycodone, for example. And talking 9 about opiates, you would be talking about 10 opium. But there's been some mixing of 11 some of this terminology. 12 Q. An opiate is derived from 13 the poppy plant, correct? 14 A. Yes. 15 Q. You mentioned hydrocodone -- 16 I mean, you mentioned oxycodone as an 17 opioid, correct? 18 A. Yes. 19 Q. What about hydrocodone, do 20 you know what that is? 21 A. Opioid, yes. 22 Q. Are there any other opioid 23 products you can identify? 24 A. Fentanyl would be an opioid</p>

<p style="text-align: right;">Page 94</p> <p>1 product. And there's a pretty long list. 2 And to be clear, I'm not a pharmacist. 3 Q. Understood. 4 A. I want to make sure that's 5 clear for the record. 6 Q. Do you understand that those 7 substances are Schedule II substances? 8 A. Yes. 9 Q. And do you understand -- 10 A. I'm sorry, just for the 11 record. 12 Oxycodone and hydrocodone? 13 Q. Yes. 14 A. Yes. 15 Q. And fentanyl? 16 A. Yes. 17 MR. NICHOLAS: What time 18 period are we talking about? 19 THE WITNESS: Again, there 20 was a rescheduling of hydrocodone 21 where it was relatively recently 22 put in II, Schedule II. 23 BY MR. PIFKO: 24 Q. In 2014 it moved from</p>	<p style="text-align: right;">Page 96</p> <p>1 our diversion control program, yes. 2 Q. Okay. And beyond complying 3 with the legal requirements, do you 4 understand why you want to prevent 5 Schedule II substances from getting into 6 illegitimate hands? 7 MR. NICHOLAS: Object to the 8 form. Object to the scope. 9 THE WITNESS: I'm still not 10 sure I understand the question. 11 BY MR. PIFKO: 12 Q. You testified earlier that 13 the idea of preventing diversion is to 14 prevent products from getting into 15 illegitimate medical use, correct? 16 MR. NICHOLAS: Object to the 17 form. Object to the scope. 18 THE WITNESS: In part, yes. 19 BY MR. PIFKO: 20 Q. And what I'm trying to 21 understand is if you have an 22 understanding as to why we want to do 23 that. 24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 95</p> <p>1 Schedule III to Schedule II, correct? 2 A. Yes, sir. 3 Q. You understand that a 4 product that is a Schedule II substance 5 has been deemed, under the laws, to have 6 a high potential for abuse, correct? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: Yes, generally 10 speaking. 11 BY MR. PIFKO: 12 Q. So when we talk about 13 preventing diversion, why do we want to 14 prevent Schedule II products from being 15 diverted? 16 MR. NICHOLAS: Object to the 17 form. Object to the scope. 18 THE WITNESS: I'm not sure I 19 understand the question. 20 BY MR. PIFKO: 21 Q. It's your job at 22 AmerisourceBergen to run its efforts to 23 prevent diversion, correct? 24 A. Correct. It's to oversee</p>	<p style="text-align: right;">Page 97</p> <p>1 form. Object to the scope. 2 THE WITNESS: Again, as 3 you've stated, as a registrant, we 4 have certain requirements imposed 5 upon us. And I oversee the 6 programs at ABC that we utilize to 7 adhere to those requirements. 8 In terms of why do we want 9 to prevent diversion, I can offer 10 my individual view. But, again, 11 that would be not responding to 12 your -- not being responsive as 13 the company representative. 14 BY MR. PIFKO: 15 Q. I'd like you to give me your 16 view, however we're going to hear it. 17 MR. NICHOLAS: Object to the 18 form. Object to the scope. 19 Go ahead. 20 THE WITNESS: So, again, 21 with that caveat in mind that I 22 mentioned, we have anti-diversion 23 programs in place to prevent the 24 misuse and abuse of controlled</p>

<p style="text-align: right;">Page 98</p> <p>1 substances.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. So if we are not effective</p> <p>4 in preventing diversion, we can have</p> <p>5 misuse of controlled substances, agree?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form. Object to the scope.</p> <p>8 THE WITNESS: So, again,</p> <p>9 here there is conjecture in your</p> <p>10 question about if we -- I'm not</p> <p>11 sure who the "we" is, but</p> <p>12 AmerisourceBergen has effective</p> <p>13 controls in place to prevent</p> <p>14 diversion.</p> <p>15 So I guess that would be my</p> <p>16 response.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Maybe it was a bad question</p> <p>19 by me using the term "we," so I'll ask it</p> <p>20 again in a different way.</p> <p>21 A. Sure.</p> <p>22 Q. And maybe we can work</p> <p>23 through that.</p> <p>24 If any registrant, not</p>	<p style="text-align: right;">Page 100</p> <p>1 result?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form. Object to the scope. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: Again, the</p> <p>6 conjecture there, I can't respond</p> <p>7 to a situation where there's not a</p> <p>8 factual bases.</p> <p>9 So I'll just rely upon my</p> <p>10 previous response that</p> <p>11 AmerisourceBergen has effective</p> <p>12 controls in place to prevent</p> <p>13 diversion.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. In carrying out your efforts</p> <p>16 to prevent diversion, are you trying to</p> <p>17 prevent drug abuse?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. Object to the scope.</p> <p>20 He's here to answer factual</p> <p>21 questions today.</p> <p>22 THE WITNESS: So on the</p> <p>23 first part, we have effective</p> <p>24 controls in place to prevent</p>
<p style="text-align: right;">Page 99</p> <p>1 speaking about any specific one, who has</p> <p>2 a duty to maintain effective controls to</p> <p>3 prevent diversion, does not maintain</p> <p>4 effective controls to prevent diversion,</p> <p>5 we can have drug abuse, correct?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form. Object to the scope.</p> <p>8 THE WITNESS: So two things.</p> <p>9 Again, if -- starting your</p> <p>10 question having some conjecture</p> <p>11 there, I really can't respond to</p> <p>12 conjecture. And also would not</p> <p>13 respond to other registrants'</p> <p>14 duties and requirements. I'll</p> <p>15 respond to ABC's.</p> <p>16 And, again, my response</p> <p>17 would be that we have effective</p> <p>18 controls in place to prevent</p> <p>19 diversion.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Let me ask you this way: If</p> <p>22 AmerisourceBergen did not have effective</p> <p>23 controls to prevent diversion, do you</p> <p>24 believe that drug abuse could occur as a</p>	<p style="text-align: right;">Page 101</p> <p>1 diversion.</p> <p>2 On the second part of that</p> <p>3 question, I believe I provided my</p> <p>4 view relative to drug abuse.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Forgive me, but I don't</p> <p>7 understand.</p> <p>8 So I'm just asking you --</p> <p>9 when you say you provided your view, I</p> <p>10 don't understand the answer yet. So I</p> <p>11 just would like you to express it again.</p> <p>12 MR. NICHOLAS: Well,</p> <p>13 obviously, in the form of that</p> <p>14 question it's clear that it's been</p> <p>15 asked and answered. Object to the</p> <p>16 form. Object to the scope. Asked</p> <p>17 and answered.</p> <p>18 THE WITNESS: Maybe we can</p> <p>19 go back to the question, and we'll</p> <p>20 start again.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. Of course. I'll try to ask</p> <p>23 it a different way.</p> <p>24 Do you believe there's a</p>

<p style="text-align: right;">Page 102</p> <p>1 linkage between drug abuse and  2 maintaining controls to prevent  3 diversion?  4 MR. NICHOLAS: Object to the  5 form. Object to the scope.  6 THE WITNESS: And, again,  7 the question would call for my  8 personal opinion.  9 And to that, I would only  10 say that I oversee programs at ABC  11 that are effective in terms of  12 preventing diversion.  13 BY MR. PIFKO:  14 Q. That's not my question. And  15 I understand that you're trying to speak  16 to an issue. But you really need to  17 answer the question.  18 And my question is if you  19 believe there's a linkage between drug  20 abuse and maintaining controls to prevent  21 diversion?  22 I don't want an answer about  23 what the policies are or procedures are,  24 that's not what I'm asking. I'm simply</p>	<p style="text-align: right;">Page 104</p> <p>1 AmerisourceBergen's procedures in this  2 question.  3 I'm simply asking if you  4 understand that there's a linkage between  5 effective controls to prevent diversion  6 and drug abuse?  7 MR. NICHOLAS: Same  8 objection. All of my same  9 objections.  10 THE WITNESS: And I would  11 rely upon my previous response.  12 BY MR. PIFKO:  13 Q. Your previous response is  14 insufficient. You have not answered the  15 question.  16 Sir, do you understand that  17 you are legally obligated to answer my  18 questions, unless he instructs you not to  19 answer; and he has to have a valid basis.  20 You need to answer my questions. You  21 cannot refuse to answer the questions,  22 okay? Do you understand that?  23 MR. NICHOLAS: He's not  24 refusing to answer the questions.</p>
<p style="text-align: right;">Page 103</p> <p>1 asking if you believe there's a linkage  2 between drug abuse and maintaining  3 effective controls to prevent diversion.  4 MR. NICHOLAS: Hold on.  5 BY MR. PIFKO:  6 Q. Do you understand the  7 question?  8 MR. NICHOLAS: Hold on.  9 I'll object to the form. I'll  10 object to the scope. The question  11 has been asked a number of times.  12 He's not a social scientist.  13 He's not an epidemiologist.  14 THE WITNESS: So I'd go back  15 to my response, and that is that  16 when it comes to our requirements  17 at ABC to have effective controls  18 in place to prevent diversion, we  19 meet those requirements.  20 BY MR. PIFKO:  21 Q. The record is clear that  22 you're not giving an answer to the  23 question. I didn't ask you if you meet  24 the requirements or anything about</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. PIFKO: He is.  2 MR. NICHOLAS: He's  3 answering the questions.  4 MR. PIFKO: No. In  5 giving --  6 MR. NICHOLAS: He's  7 answering the question.  8 MR. PIFKO: In giving  9 evasive answers --  10 MR. NICHOLAS: You can't --  11 MR. PIFKO: -- and speaking  12 about something that's not  13 responsive to my question is not  14 answering. It's not cooperative.  15 And we will address it.  16 BY MR. PIFKO:  17 Q. You're a man of the law, I  18 don't need to explain that to you. You  19 understand.  20 We need your cooperation.  21 This is a serious matter. You need to  22 answer the question, okay?  23 MR. NICHOLAS: Hold on.  24 BY MR. PIFKO:</p>

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1 Q. And if I ask you a question  
2 that's a yes-or-no question, you can't go  
3 and start meandering about the policies  
4 and procedures, okay? You need to think  
5 about what I'm asking and you need to  
6 answer it.  
7 Do you understand?  
8 MR. NICHOLAS: That's a  
9 lecture. He doesn't need a  
10 lecture. It's inappropriate.  
11 BY MR. PIFKO:  
12 Q. Do you understand what I'm  
13 telling you, sir?  
14 MR. NICHOLAS: And you can't  
15 talk over me.  
16 MR. PIFKO: I can. You're  
17 not objecting.  
18 MR. NICHOLAS: Then you'll  
19 keep talking and I'll keep  
20 talking. You're talking over me.  
21 You're lecturing him, you're  
22 bullying him and harassing.  
23 MR. PIFKO: Because he's not  
24 cooperating.

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1 MR. NICHOLAS: I'm not  
2 instructing him not to answer.  
3 MR. PIFKO: He's not  
4 complying with the rules.  
5 MR. NICHOLAS: He's answered  
6 the question about eight times.  
7 MR. PIFKO: He's not.  
8 And --  
9 MR. NICHOLAS: As you said  
10 in the Merrill --  
11 MR. PIFKO: -- the record is  
12 clear.  
13 MR. NICHOLAS: As you said  
14 in the Merrill Gordon deposition,  
15 he's entitled to answer the  
16 deposition. Your witness is  
17 entitled --  
18 MR. PIFKO: You can do your  
19 lawyering all you want, but he's  
20 not cooperating.  
21 MR. NICHOLAS: I disagree.  
22 MR. PIFKO: Okay.  
23 BY MR. PIFKO:  
24 Q. Sir, do you understand what

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1 I just said to you about the instructions  
2 about complying about this deposition?  
3 A. Yes.  
4 Q. Do you intend to comply?  
5 A. I have been complying.  
6 Q. I disagree with you,  
7 respectfully. I am asking you very  
8 specific questions, and you are not  
9 responding to my questions.  
10 Do you intend to provide  
11 accurate questions -- or answers that  
12 respond to exactly what I ask you?  
13 MR. NICHOLAS: Object to the  
14 form.  
15 THE WITNESS: I intend to  
16 answer your questions accurately,  
17 yes.  
18 BY MR. PIFKO:  
19 Q. Do you intend to respond to  
20 the questions that I ask you?  
21 MR. NICHOLAS: Object to the  
22 form.  
23 THE WITNESS: Yes.  
24 BY MR. PIFKO:

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1 Q. If I ask you what your  
2 favorite color is, I don't want to hear  
3 what you had for dinner.  
4 Do you understand that?  
5 MR. NICHOLAS: Object to the  
6 form. Pretty obnoxious. No need  
7 for that kind of thing.  
8 Right?  
9 BY MR. PIFKO:  
10 Q. Do you understand that?  
11 MR. NICHOLAS: Object to the  
12 form.  
13 THE WITNESS: Yes.  
14 BY MR. PIFKO:  
15 Q. So let's try this again.  
16 Do you understand there to  
17 be a linkage between preventing diversion  
18 and drug abuse?  
19 MR. NICHOLAS: Object to the  
20 form. All the same objections.  
21 THE WITNESS: Again, the  
22 question has been asked several  
23 times and the question concerns  
24 having effective controls.



<p style="text-align: right;">Page 110</p> <p>1 And I've responded several 2 times relative to the issue of 3 effective controls that we have in 4 place at ABC to prevent diversion. 5 I would rely upon that 6 response again. 7 BY MR. PIFKO: 8 Q. That's not the question I've 9 asked you. You're not answering. You're 10 not cooperating, okay? 11 I'm going to bring you back 12 here, we're going to go all day here, and 13 I'm going to ask you all the questions I 14 want to ask you. And we're going to have 15 to bring you back here, and we're going 16 to have to get some more answers because 17 you're not cooperating, okay? I want you 18 to understand that. 19 MR. NICHOLAS: Object to the 20 form. Object to the speech. 21 What he's saying isn't true. 22 Go on. 23 BY MR. PIFKO: 24 Q. If AmerisourceBergen does</p>	<p style="text-align: right;">Page 112</p> <p>1 BY MR. PIFKO: 2 Q. You haven't. Please answer. 3 MR. NICHOLAS: Object to the 4 form. 5 THE WITNESS: If we fail to 6 have effective controls in place, 7 is a question that doesn't state 8 facts. It states conjecture. 9 And I can't respond relative 10 to conjecture. I can respond 11 relative to the facts of the 12 matter around effective controls. 13 We have effective controls in 14 place to prevent diversion -- 15 BY MR. PIFKO: 16 Q. In joining -- 17 A. -- at ABC. 18 Q. In joining AmerisourceBergen 19 in 2014, did you review the company's 20 prior practices and procedures regarding 21 diversion? 22 A. Yes. 23 Q. How far back did you 24 familiarize yourself with the company's</p>
<p style="text-align: right;">Page 111</p> <p>1 not maintain effective controls to 2 prevent diversion, do you believe that 3 drug abuse can occur? 4 MR. NICHOLAS: Object to the 5 form. Outside the scope. 6 THE WITNESS: Again, you've 7 asked me this question in several 8 different formats and, again, 9 you're asking with this conjecture 10 if we didn't have them in place. 11 And my only response to that 12 is, we have them in place, 13 effective controls, to prevent 14 diversion. And so I can't respond 15 to a question relative to 16 conjecture. 17 BY MR. PIFKO: 18 Q. If you fail to prevent 19 diversion, do you believe that drugs can 20 get into illegitimate channels? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: I've responded 24 to the question.</p>	<p style="text-align: right;">Page 113</p> <p>1 practices and procedures concerning 2 diversion? 3 A. I don't know that I can 4 assign a specific year. I would say 5 looking back several years, more than two 6 or three. 7 Q. Are you familiar with the 8 company's practices and procedures prior 9 to 2007? 10 MR. NICHOLAS: Object to the 11 scope. This is way outside the 12 scope of his 30(b)(6) domain. 13 THE WITNESS: I may have 14 some limited knowledge relative to 15 the practices prior to 2007. 16 BY MR. PIFKO: 17 Q. You testified as the 18 corporate representative in litigation 19 brought by the West Virginia Attorney 20 General on behalf of AmerisourceBergen, 21 correct? 22 A. Yes. 23 Q. And you testified about the 24 company's policies and procedures,</p>

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1 correct? Concerning diversion?  
2 A. Yes.  
3 Q. How far back were you  
4 familiar with the company's policies in  
5 connection with your testimony in that  
6 case?  
7 MR. NICHOLAS: Object to the  
8 form.  
9 THE WITNESS: To my  
10 recollection, the stated time  
11 period was some time in 2007, if I  
12 recall correctly.  
13 BY MR. PIFKO:  
14 Q. So you have some  
15 familiarity, from testifying in that  
16 litigation, with the company's practices  
17 going back to 2007?  
18 MR. NICHOLAS: Object to  
19 the form. Object to the form.  
20 Object to the scope. He's now  
21 testifying individually.  
22 THE WITNESS: Yes.  
23 BY MR. PIFKO:  
24 Q. Do you believe that, in

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1 2007, AmerisourceBergen's policies and  
2 procedures for preventing diversion were  
3 appropriate?  
4 MR. NICHOLAS: Object to the  
5 form. Object to the scope.  
6 THE WITNESS: Yes.  
7 BY MR. PIFKO:  
8 Q. Has anyone ever told you  
9 that you have problems with your  
10 diversion control program?  
11 MR. NICHOLAS: Object to the  
12 form. And scope.  
13 THE WITNESS: I would say it  
14 would be helpful to narrow the  
15 question, because anyone is --  
16 that's quite broad. And I would  
17 say in the broad context, the  
18 answer would be no.  
19 BY MR. PIFKO:  
20 Q. No one has ever told you  
21 that AmerisourceBergen's program has gaps  
22 with respect to maintaining effective  
23 controls against diversion?  
24 MR. NICHOLAS: Object to

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1 form. Object to the scope.  
2 THE WITNESS: Again, I'd  
3 have to ask you to qualify it  
4 more, because that's quite broad  
5 of a question.  
6 So perhaps it would be -- I  
7 could be more responsive if the  
8 question was narrowed down some.  
9 - - -  
[REDACTED]

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[REDACTED]

Page 118

[REDACTED]

Page 120

[REDACTED]

Page 119

[REDACTED]

Page 121

[REDACTED]



Page 122

[REDACTED]

Page 124

[REDACTED]

Page 123

[REDACTED]

Page 125

[REDACTED]

Page 126

Page 128

[illegible]

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Page 129

Response	Percentage
U.S. should take action	85%
U.S. should not take action	15%

Page 130

[REDACTED]

Page 132

[REDACTED]

Page 131

[REDACTED]

Page 133

[REDACTED]

Page 134

[REDACTED]

Page 136

[REDACTED]

Page 135

[REDACTED]

Page 137

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Page 138

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Page 140

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Page 139

1 [REDACTED]

Page 141

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Page 142

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Page 144

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Page 143

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Page 145

1 [REDACTED]

Page 146

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Page 148

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Page 147

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Page 149

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Page 150

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Page 152

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Page 151

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Page 154

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Page 165

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Page 166

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Page 168

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Page 167

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Page 169

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Page 170

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Page 172

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Page 171

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Page 173

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Page 174

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Page 176

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Page 175

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Page 177

[REDACTED]

Page 178

[REDACTED]

Page 180

[REDACTED]

Page 179

[REDACTED]

Page 181

[REDACTED]

20 MR. PIFKO: Okay. We can  
21 take a lunch break. Thank you.  
22 VIDEO TECHNICIAN: Going off  
23 the record. 12:24 p.m.  
24 - - -



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1 (Whereupon, a luncheon  
2 recess was taken.)  
3 - - -  
4 VIDEO TECHNICIAN: We're  
5 back on the record. The time is  
6 1:06 p.m.  
7 BY MR. PIFKO  
8 Q. I'm handing you what's  
9 marked as Exhibit-9. I skipped one, I'll  
10 come back to it.  
11 - - -  
12 (Whereupon,  
13 AmerisourceBergen-May Exhibit-9  
14 ABDCMDL 00216332-33, was marked  
15 for identification.)  
16 - - -  
17 BY MR. PIFKO:  
18 Q. Take a moment to review that  
19 and let me know when you're done.  
20 For the record, it's a  
21 document Bates labeled ABDCMDL 00216232  
22 through 33.  
23 Are you ready?  
24 A. Yes.

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1 Q. Have you seen this document  
2 before?  
3 A. I have.  
4 Q. Do you know what this is?  
5 A. It's an e-mail from Caroline  
6 Conneely to myself and others.  
7 Q. What was the last time you  
8 saw this?  
9 A. Date of the e-mail, March  
10 15th, 2016.  
11 Q. Is this a true and correct  
12 copy of the communications reflected in  
13 this e-mail?  
14 A. Yes.  
15 Q. So this is an e-mail, on the  
16 first page, it's from Caroline Conneely,  
17 dated Tuesday, March 15th, 2016, to you,  
18 Eric Cherveny, Sharon Hartman. The  
19 subject is OMP reason codes.  
20 The first question, Caroline  
21 Conneely, she's the consultant who  
22 prepared that report?  
23 MR. NICHOLAS: Object to the  
24 form.

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1 THE WITNESS: Could you  
2 refer me to the report? The FTI  
3 Consulting report?  
4 BY MR. PIFKO:  
5 Q. Correct. Exhibit-4 to be --  
6 A. I believe she prepared that  
7 report, yes.  
8 Q. This is later -- as we  
9 discussed, that report was dated in 2015.  
10 Do you recall?  
11 A. Yes.  
[REDACTED]

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[REDACTED]

Page 186

[REDACTED]

Page 188

[REDACTED]

Page 187

[REDACTED]

Page 189

[REDACTED]

Page 190

Page 192

[illegible]

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Row	Bar Length (approx. %)
1	75
2	85
3	90
4	55
5	40
6	10
7	80
8	90
9	80
10	95
11	10
12	85
13	90
14	80
15	95
16	10
17	85
18	70
19	85
20	85
21	75
22	10
23	80
24	35
25	70
26	95
27	90
28	45

[illegible]

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[REDACTED]

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1 BY MR PIFKO:  
2 Q. I'm handing you what is  
3 marked as Exhibit-8.  
4 Please take a moment to  
5 review that and let me know when you're  
6 ready.  
7 The document is Bates  
8 labeled ABD CMDL 00158342. The electronic  
9 data accompanying the document reflects  
10 that you were the custodian and that it's  
11 dated July 2nd, 2014.  
12 And the file name for the  
13 document is 2014 Thought Spot Diversion  
14 Control Training PowerPoint.  
15 MR. NICHOLAS: Just before  
16 we go into questioning on this  
17 document, a reminder, or whatever  
18 you want to call it, that the  
19 witness is designated as a  
20 30(b)(6) deponent for the period  
21 of time from 2015 to May of 2018.  
22 So to the extent we're  
23 embarking on questions about prior  
24 information or prior materials,

Page 195

[REDACTED]

24 - - -

Page 197

1 he's testifying as -- in his  
2 individual capacity.  
3 BY MR PIFKO:  
4 Q. Let me know when you're  
5 ready to talk.  
6 A. Thank you.  
7 I'm ready.  
8 Q. Do you recognize this  
9 document?  
10 A. I do.  
11 Q. Can you tell me what this  
12 is?  
13 A. This is a PowerPoint  
14 presentation that was put together for a  
15 sales meeting, where I was doing some  
16 training to our sales staff in the  
17 beginning of August 2014.  
18 Q. Is this a true and correct  
19 copy of a presentation that you gave at  
20 this conference?  
21 A. Yes.  
22 Q. It says the conference  
23 occurred from July -- I'm looking at the  
24 first page of the document -- from July

<p style="text-align: right;">Page 198</p> <p>1 30th to August 2nd, 2014 at the MGM Grand 2 in Las Vegas; is that correct? 3 A. Correct. 4 Q. And you attended this 5 conference during that time period? 6 A. Yes. 7 Q. And what day was this 8 presented on? 9 A. I'm not sure at this time. 10 I'd have to consult my calendar. 11 Q. And the conference was held 12 at the MGM Grand casino in Las Vegas? 13 A. Yes. 14 Q. What's Thought Spot? 15 A. What is Thought Spot? It's 16 the name of the conference. It's where 17 we bring in many of our independent 18 retail pharmacy customers, together with 19 our community and specialty sales staff, 20 and they spend time together during the 21 conference. 22 Q. When was the last time you 23 saw this document? 24 A. I believe I saw this</p>	<p style="text-align: right;">Page 200</p> <p>1 abuse problem in the U.S. and, 2 tragically, people are dying. 3 Do you see that? 4 A. I do. 5 Q. Do you agree with that? 6 A. Yes. 7 Q. What was the basis for that 8 conclusion that you wrote there that I 9 just read? 10 A. The statistics. 11 Q. Like the items referenced up 12 here, the 38,329 unintentional drug 13 overdose deaths in 2010? 14 A. Yes. And other data that I 15 was familiar with. 16 But these are two of the 17 statistics that would support that 18 statement. 19 Q. We talked, I believe, that 20 you joined AmerisourceBergen in 2014. 21 Do you remember the month? 22 A. I believe it was right 23 around the 1st of March, within a week. 24 Q. So this is only a few months</p>
<p style="text-align: right;">Page 199</p> <p>1 document last week. I reviewed several 2 PowerPoint presentations, I believe this 3 was among them, in preparation for today. 4 Q. Prior to that when was the 5 last time you saw this? 6 A. It would have been at the 7 time of presentation. 8 Q. So let's go to Page 6. 9 So we've got the slides 10 here, these are -- if we look just 11 generally at the format of the document. 12 At the top half of the page, 13 it's the slides that you presented at the 14 conference? 15 A. Yes. 16 Q. And then on the bottom are 17 notes that you made to yourself? 18 A. Yes. 19 Q. This slide is entitled, 20 National Abuse Facts, correct? 21 A. Yes. 22 Q. Your notes say, The 23 statistics overwhelmingly demonstrate 24 that we have a terrible prescription drug</p>	<p style="text-align: right;">Page 201</p> <p>1 after you had been at the company? 2 A. Based upon the dates here, 3 yes. 4 Q. At this time, did you have a 5 belief that members of the pharmaceutical 6 industry, be it manufacturers and/or 7 distributors, had any role in 8 contributing to the prescription drug 9 abuse problem in the U.S. that you 10 reference here? 11 MR. NICHOLAS: Object to the 12 form of the question. I'll 13 reiterate the scope objection as 14 well. But I object to the form of 15 the question. 16 THE WITNESS: At that time, 17 I have no specific memory of any 18 conclusions that I may have drawn 19 relative to the prescription drug 20 abuse problem. 21 BY MR PIFKO: 22 Q. Do you believe that we still 23 have a prescription drug problem in the 24 United States?</p>

<p style="text-align: right;">Page 202</p> <p>1 A. I believe that we've made 2 great advancements in the last several 3 years. I still believe there is work to 4 be done. 5 Q. Have you heard the term 6 "opioid crisis"? 7 A. I have. 8 Q. Do you believe that we're 9 still in the opioid crisis? 10 A. I do. 11 Q. Do you presently have a view 12 as to whether manufacturers and 13 distributors of opioid products 14 contributed to the opioid crisis? 15 MR. NICHOLAS: Object to the 16 form. Outside the scope. 17 THE WITNESS: I don't have 18 an opinion relative to 19 manufacturers and distributors. 20 I can respond in terms of 21 AmerisourceBergen. And I do not 22 believe they contributed to the 23 opioid crisis. 24 BY MR PIFKO:</p>	<p style="text-align: right;">Page 204</p> <p>1 I know that 2 AmerisourceBergen delivers 3 medications every day to people 4 who need them, life-saving 5 medications, the majority of which 6 is non-controlled. 7 And in terms of the market 8 share of total medicine delivered, 9 non-controlled and controlled, 10 which is a much smaller aspect of 11 our business as a percentage, I'd 12 have to leave those specific 13 responses to somebody -- somebody 14 else that has that information. 15 BY MR PIFKO: 16 Q. So you believe that -- have 17 you heard the term the "three big three," 18 with respect to McKesson, Cardinal and 19 AmerisourceBergen, in terms of their role 20 as distributors in the pharmaceutical 21 industry in the United States? 22 MR. NICHOLAS: Object to the 23 form. 24 THE WITNESS: I've seen</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. Do you believe that as a -- 2 let me back up. 3 Do you have a sense of what 4 market share of the United States 5 distribution of opioid products 6 AmerisourceBergen has presently? 7 MR. NICHOLAS: Objection. 8 Outside the scope. 9 THE WITNESS: I'm probably 10 not the best person to talk about 11 market share. 12 BY MR PIFKO: 13 Q. Have you previously heard 14 that AmerisourceBergen, Cardinal Health, 15 and McKesson have approximately 80 to 90 16 percent of the market share of 17 distribution of pharmaceuticals in the 18 United States? 19 MR. NICHOLAS: Objection. 20 Object to the form. Outside the 21 scope. 22 THE WITNESS: Again, I'm 23 probably not the best person to 24 talk about market share.</p>	<p style="text-align: right;">Page 205</p> <p>1 publications and documents that 2 contain that reference. 3 Specifically what those 4 publications are, I couldn't say. 5 BY MR PIFKO: 6 Q. Do you believe that as major 7 entities in the closed system of 8 distribution of controlled substances, 9 Cardinal, AmerisourceBergen and McKesson 10 have the ability to beneficially impact 11 the opioid crisis through their 12 practices? 13 MR. NICHOLAS: Object to the 14 form. Objection on scope as well. 15 THE WITNESS: You know, in 16 the context of your question, I 17 would say that every registrant 18 has the potential to have an 19 impact, large or small; 20 distributor, practitioner, 21 pharmacy, manufacturer. 22 And, again, my concern is 23 AmerisourceBergen and what we do 24 there every day to fulfill our</p>

<p style="text-align: right;">Page 206</p> <p>1 obligations. And that's what my  2 focus is.  3 BY MR PIFKO:  4 Q. Do you believe that  5 AmerisourceBergen has a responsibility to  6 take actions to reduce the impacts of the  7 opioid crisis?  8 MR. NICHOLAS: Objection to  9 the form. Objection as to scope  10 as well.  11 THE WITNESS: I believe that  12 AmerisourceBergen has various  13 requirements that are imposed upon  14 it, as a registrant, through the  15 laws and regulations.  16 BY MR PIFKO:  17 Q. Do you believe that by  18 preventing diversion AmerisourceBergen  19 can make a positive impact on the opioid  20 crisis?  21 MR. NICHOLAS: Object to the  22 form. Objection as to scope.  23 THE WITNESS: I think if  24 AmerisourceBergen fulfills its</p>	<p style="text-align: right;">Page 208</p> <p>1 do not have as a wholesale  2 distributor.  3 And generally speaking, I  4 think that if all registrants of  5 all types fulfill their legal  6 obligations, that would -- that  7 would have a positive impact.  8 BY MR PIFKO:  9 Q. On the opioid crisis?  10 A. On the opioid crisis.  11 MR. NICHOLAS: Object to the  12 form.  13 THE WITNESS: Yes.  14 BY MR PIFKO:  15 Q. Do you believe that by  16 following its obligation to prevent  17 diversion, AmerisourceBergen can prevent  18 opioid pills from falling into the hands  19 of the black markets?  20 MR. NICHOLAS: Objection as  21 to form. Objection as to scope.  22 THE WITNESS: So, again, you  23 know, you're asking now inserting  24 conjecture. And I have no</p>
<p style="text-align: right;">Page 207</p> <p>1 requirements under the  2 regulations, it will accomplish  3 what it's required to do.  4 BY MR PIFKO:  5 Q. And what is it required to  6 do?  7 MR. NICHOLAS: Object to the  8 form. Object -- let me start that  9 again.  10 Objection as to form.  11 Objection as to scope.  12 THE WITNESS: Again, as a  13 registrant and a wholesale  14 distributor, we have certain  15 requirements imposed upon us in  16 the closed system of distribution  17 that you've alluded to.  18 Within the closed system,  19 there are different requirements  20 based upon where you sit. The  21 practitioner certainly has a  22 different requirement,  23 establishing a patient/doctor  24 relationship, for example, that we</p>	<p style="text-align: right;">Page 209</p> <p>1 response to a set of facts that  2 aren't real. I can't -- I can't  3 respond to a question that's  4 conjecture. I can respond to a  5 question, you know, where there  6 are facts associated with the  7 question.  8 So as I said before, when it  9 comes to our regulatory  10 requirements at AmerisourceBergen,  11 we meet them. We're constantly  12 evaluating how our performance is  13 and how we're meeting them. We  14 are constantly evaluating things  15 that we could possibly do  16 differently to continuously  17 analyze the results of our work,  18 all in an effort to do everything  19 that we can to meet our  20 requirements.  21 BY MR PIFKO:  22 Q. Do you believe that one of  23 the things that you are striving to do,  24 as the senior-most person in the</p>



<p style="text-align: right;">Page 210</p> <p>1 diversion control department, is to 2 prevent pills from getting into illegal 3 markets? 4 MR. NICHOLAS: Objection as 5 to form. Objection as to scope. 6 THE WITNESS: Again, I view 7 my role, as the senior person over 8 our diversion control efforts, as 9 one to make sure that we, as a 10 company, day in and day out, 11 fulfill all of our legal 12 obligations. That's my number one 13 priority. 14 And when I come to work each 15 day, that's what I try to do. 16 BY MR PIFKO: 17 Q. In carrying out your duties 18 as the head of the diversion control 19 program for AmerisourceBergen, do you 20 believe that -- is it important to you to 21 prevent pills from falling into the hands 22 of someone who could suffer an overdose? 23 MR. NICHOLAS: Objection as 24 to form. Objection as to scope.</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. Is that the company's view, 2 too? 3 MR. NICHOLAS: Objection as 4 to form. Objection as to scope. 5 THE WITNESS: -- I think 6 that the company has stated 7 publicly that they recognize the 8 opioid abuse problem and want to 9 do everything they can to 10 contribute to solutions. 11 BY MR PIFKO: 12 Q. Let's go to Page 9 of this 13 document. 14 Are you there? 15 A. I am. 16 Q. It says, More recently, DEA 17 has shifted an increasingly large number 18 of their special agents who are 19 investigating criminal drug trafficking 20 organizations to newly created tactical 21 diversion squads. And part of their 22 mandate is to use their law enforcement 23 skills at developing criminal 24 investigations, which lead to indictments</p>
<p style="text-align: right;">Page 211</p> <p>1 THE WITNESS: Again, I think 2 I've been pretty clear in terms of 3 what I hope to accomplish and what 4 I believe to be my 5 responsibilities are at 6 AmerisourceBergen. 7 I'm happy to repeat those. 8 BY MR PIFKO: 9 Q. Do you hope to accomplish a 10 reduction of overdose deaths? Is that 11 something that you seek to accomplish? 12 MR. NICHOLAS: Objection as 13 to form. Objection as to scope. 14 THE WITNESS: Again, as I've 15 outlined, I think that there are 16 various requirements imposed upon 17 different registrants within the 18 system. And I think if, that, all 19 registrants concentrate on their 20 requirements and carry out those 21 duties, it will have a positive 22 impact on prescription drug abuse. 23 That's a personal view -- 24 BY MR PIFKO:</p>	<p style="text-align: right;">Page 213</p> <p>1 and arrests, of all DEA registrants that 2 are members of the closed system, 3 including manufacturers, distributors, 4 doctors, pharmacies. These criminal 5 charges may be brought against the 6 organizations themselves and/or the 7 organization's employees. 8 Do you see that? 9 A. I do. 10 Q. What was the basis of making 11 that statement? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: That statement 15 was made in the context of this 16 entire presentation. It was 17 intended to inform our sales 18 folks, educate our sales folks, in 19 a very general way, about facets 20 of diversion control and our 21 obligations. 22 So there's no specific 23 intent of this statement, other 24 than to say, this is part of the</p>

Page 214

1 regulatory environment, as well as  
2 these other things.  
3 BY MR PIFKO:  
4 Q. How did you know that there  
5 were these newly created tactical  
6 diversion squads?  
7 MR. NICHOLAS: Objection as  
8 to form. Objection as to scope.  
9 THE WITNESS: Through my  
10 work and experience at DEA. I  
11 oversaw one of these DEA tactical  
12 diversion squads.  
13 BY MR PIFKO:  
14 Q. You oversaw one of these  
15 tactical --  
16 A. Yes.  
17 Q. -- diversion squads?  
18 In what part of your career  
19 did you oversee one of these tactical --  
20 A. When I was in Atlanta.  
21 Q. What was the -- was the task  
22 of the tactical diversion squad  
23 consistent with what's reflected here?  
24 MR. NICHOLAS: Object to the

Page 215

1 form. Scope.  
2 THE WITNESS: Yes, generally  
3 speaking.  
4 BY MR PIFKO:  
5 Q. What were you seeking to do  
6 as part of that task force -- sorry,  
7 tactical diversion squad?  
8 MR. NICHOLAS: Object to the  
9 form. Object as to scope. And I  
10 just want to make it clear that  
11 the witness is not speaking as a  
12 representative of the DEA or  
13 purporting to represent any DEA  
14 positions.  
15 THE WITNESS: I'm sorry,  
16 what was the question?  
17 BY MR PIFKO:  
18 Q. I was asking what the  
19 purpose -- you said you ran one of these  
20 tactical diversion squads, correct?  
21 A. To be specific, I had a  
22 group supervisor who reported directly to  
23 me who was the direct supervisor of the  
24 tactical diversion squad.

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1 Q. What was the purpose of the  
2 tactical diversion squad that you  
3 oversaw?  
4 MR. NICHOLAS: Object as to  
5 form and scope. And with the same  
6 caveat that I just interposed a  
7 minute ago.  
8 Go ahead.  
9 THE WITNESS: And, again,  
10 beyond -- going beyond the  
11 description I've provided here, I  
[REDACTED]

Page 217

[REDACTED]

Page 218

[REDACTED]

Page 220

[REDACTED]

Page 219

[REDACTED]

Page 221

1 BY MR PIFKO:  
2 Q. Let's go to Slide 16 -- or  
3 Page 16, it says Slide 17.  
4 Are you there?  
5 A. Yes, sir.  
6 Q. Okay. It says, What's being  
7 diverted?  
8 Do you see that?  
9 A. Yes.  
10 Q. The biggest threat for  
11 diversion is our opioids.  
12 Do you see that?  
13 A. Yes.  
14 Q. Do you agree with that  
15 statement?  
16 MR. NICHOLAS: Object to the  
17 form.  
18 THE WITNESS: I agree.  
19 BY MR PIFKO:  
20 Q. You see here it says, So it  
21 happens frequently that you will see  
22 someone who was prescribed hydrocodone  
23 following an injury or medical  
24 intervention for legitimate medical

<p style="text-align: right;">Page 222</p> <p>1 purposes but then continues to use and  2 abuse the drug long after the legitimate  3 medical need has passed.  4 Do you see that?  5 A. I do.  6 Q. Do you agree with that  7 statement?  8 A. I believe that could occur,  9 yes.  10 Q. Do you believe that in  11 trying to prevent diversion, you're  12 trying to prevent that from occurring?  13 MR. NICHOLAS: Object to the  14 form. Object as to scope as well.  15 THE WITNESS: So as a  16 wholesale distributor in the  17 environment in which we work and  18 the things that we can and cannot  19 do, I cannot, as a wholesale  20 distributor, prevent a  21 practitioner from continually  22 writing a hydrocodone prescription  23 for a patient who suffered an  24 injury a long time ago but</p>	<p style="text-align: right;">Page 224</p> <p>1 potential misuse and abuse,  2 there's clearly things, as a  3 wholesale distributor, that we can  4 and cannot do.  5 And that clinical process  6 and that overprescribing, to the  7 extent that we can impact that by  8 identifying suspicious orders, we  9 do that. But beyond that, there's  10 nothing we can do.  11 BY MR PIFKO:  12 Q. So in identifying suspicious  13 orders, to the extent you can have an  14 impact on that, you try to do that?  15 MR. NICHOLAS: Object to the  16 form. And scope. Object to the  17 form.  18 THE WITNESS: Again, as a  19 wholesale distributor, we have a  20 view into the data that that  21 pharmacy, the consumption data,  22 the products that that pharmacy is  23 ordering from us. And based upon  24 that data, we can make a</p>
<p style="text-align: right;">Page 223</p> <p>1 continues to write those. There  2 is nothing -- I have no visibility  3 to that patient. I have no  4 visibility to that practitioner.  5 Likewise, I don't see that  6 patient when he walks through the  7 doors at the pharmacy and he  8 interacts with the pharmacist.  9 And I don't see the information  10 that the pharmacy has at their  11 disposal, the pharmacist, in terms  12 of the diagnostic code on that  13 prescription. Of course, there  14 are HIPAA concerns there as well.  15 So our role in the supply  16 chain is fairly limited. I can  17 monitor the orders being placed by  18 that pharmacy, and I can look for  19 orders that meet the definition of  20 suspicious. And if I find those,  21 I can report those to DEA. But to  22 make a connection between that  23 sort of work and me being able to  24 prevent overprescribing and</p>	<p style="text-align: right;">Page 225</p> <p>1 determination if an order is  2 suspicious.  3 But to be clear, even an  4 order that's found to be  5 suspicious and rejected by us,  6 there is not an equation between  7 finding an order suspicious and  8 diversion. They're separate.  9 They're separate concepts. There  10 could be an order that we find as  11 suspicious where there's  12 absolutely no diversion taking  13 place.  14 And so, again, as a  15 wholesale distributor, our  16 capabilities are somewhat narrow  17 in this respect.  18 BY MR PIFKO:  19 Q. The first question here on  20 this note here says, And what's being  21 diverted?  22 Agree?  23 A. Yes.  24 Q. And the heading of the</p>

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1 slide, Is Most Commonly Diverted Drugs,  
2 right?  
3 A. Yes.  
4 Q. You're talking about  
5 diverted drugs, right, in this slide?  
6 A. We're talking about the most  
7 commonly diverted drugs, yes.  
8 Q. And then you're talking  
9 about the biggest threat for diversion  
10 are opioids.  
11 Do you see that?  
12 A. Yes.  
13 Q. So you then make the  
14 linkage, you talk about -- you then  
15 present the sentence I just read, about  
16 someone who is prescribed hydrocodone  
17 following an injury or medical  
18 intervention for medical -- legitimate  
19 medical purposes but then continues to  
20 use and abuse the drug long after the  
21 legitimate medical need has passed.  
22 Why did you feel that you  
23 wanted to communicate that information to  
24 the people at this conference in

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1 connection with the discussion of  
2 commonly diverted drugs?  
3 MR. NICHOLAS: Object to the  
4 form. Objection as to scope.  
5 THE WITNESS: Again, this is  
6 one slide of many where my goal  
7 here was to inform and educate our  
8 sales staff. And so that was the  
9 intent of this presentation, to  
10 make our sales staff aware, who  
11 may not be aware, of some of the  
12 finer points around diversion.  
13 Maybe they read about opioid  
14 abuse, maybe there's some other  
15 general knowledge they have.  
16 Here is simply an attempt by  
17 me to describe some of the drugs  
18 that are abused, and also a  
19 possible scenario on how that  
20 abuse might occur. There could be  
21 many other scenarios. But this  
22 was the goal and the intent and  
23 the reasons behind the statement.  
24 BY MR PIFKO:

Page 228

1 [REDACTED]  
2 [REDACTED]  
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Page 229

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24 [REDACTED]

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Page 232

Category	Percentage
1	91%
2	89%
3	88%
4	87%
5	86%
6	85%
7	84%
8	83%
9	82%
10	81%
11	80%
12	79%
13	78%
14	77%
15	76%
16	75%
17	74%
18	73%
19	72%
20	71%
21	70%
22	69%
23	68%
24	67%
25	66%
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27	64%
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76	15%
77	14%
78	13%
79	12%
80	11%
81	10%
82	9%
83	8%
84	7%
85	6%
86	5%
87	4%
88	3%
89	2%
90	1%

1 [REDACTED]

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9 [REDACTED]

10 [REDACTED]

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94 [REDACTED]

95 [REDACTED]

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98 [REDACTED]

99 [REDACTED]

100 [REDACTED]

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[illegible]

Category	Value (approximate percentage)
1	15
2	45
3	95
4	90
5	88
6	70
7	55
8	85
9	80
10	92
11	35
12	80
13	78
14	82
15	85
16	75
17	78
18	80
19	85
20	88

Page 234

[REDACTED]

Page 236

[REDACTED]

Page 235

[REDACTED]

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[REDACTED]



<p style="text-align: right;">Page 238</p> <p>1 Q. Let's talk about the  2 physical red flags of diversion. Go to  3 the next page.  4 It shows a long line of  5 people outside a pharmacy.  6 Why is that a red flag?  7 A. Again, we've all been to  8 pharmacies and have picked up  9 prescriptions; and any prescription that  10 I've ever picked up, I don't recall  11 seeing a long line of patrons outside.  12 So just for the sheer fact alone that  13 it's something that you wouldn't  14 typically see.  15 That being said, again, this  16 presentation is a little dated. I think  17 that some of these red flags were  18 probably more relevant some time ago. I  19 don't think that -- that sort of activity  20 there would even be more rare in these  21 days.  22 Q. The next slide has some  23 license plates, and it talks about --  24 well, you say, I was always amazed, in my</p>	<p style="text-align: right;">Page 240</p> <p>1 For people to travel great  2 distances to receive -- or to have  3 prescriptions filled would, therefore, be  4 a red flag.  5 Q. And in giving this  6 presentation and making these examples,  7 these are things that you wanted the  8 salespeople who are visiting the  9 pharmacies in connection with their jobs,  10 you wanted them to be able to observe  11 these things so they could report it back  12 to the company?  13 MR. NICHOLAS: Object to the  14 form.  15 THE WITNESS: We wanted them  16 to be knowledgeable about the red  17 flags. We wanted them to, if they  18 were to make these observations or  19 other observations that somehow  20 seemed unusual to them, we wanted  21 them to collect that information  22 and pass it back to us in the  23 diversion control section so that  24 we could follow up, yes.</p>
<p style="text-align: right;">Page 239</p> <p>1 former position with DEA in Atlanta, when  2 we would be observing the activities at a  3 particular pharmacy and you would see  4 vehicles from Tennessee, West Virginia  5 and Virginia show up at the pharmacy,  6 typically with more than one person in  7 the vehicle, where the occupants of the  8 vehicle would go in, fill a prescription,  9 and then head right back to the highway  10 in the direction of their home state.  11 Do you see that?  12 A. I do.  13 Q. That's a red flag of  14 diversion?  15 MR. NICHOLAS: Object to the  16 form.  17 THE WITNESS: Yes.  18 BY MR PIFKO:  19 Q. And why is that?  20 A. So when I go to fill a  21 prescription, you know, unless there's  22 some hard-to-receive medication, I'm  23 going to go to a place that's convenient  24 to my home or my office.</p>	<p style="text-align: right;">Page 241</p> <p>1 BY MR PIFKO:  2 Q. And you believe that by them  3 presenting that information, it can aid  4 the company in preventing diversion,  5 correct?  6 MR. NICHOLAS: Object to the  7 form.  8 THE WITNESS: By training  9 our diversion -- I mean, by  10 training our sales staff, I'm  11 sorry, this was just another step  12 that we took that we felt was  13 required to fulfill our  14 responsibilities under the  15 regulations.  16 BY MR PIFKO:  17 Q. Is this a step that was  18 added to your process?  19 MR. NICHOLAS: Object to the  20 form.  21 THE WITNESS: There was some  22 training that took place of our  23 sales staff. I believe I saw, in  24 the past, other PowerPoints that</p>

<p style="text-align: right;">Page 242</p> <p>1 were presented. But I can't talk  2 about the specifics in terms of  3 who and when that was done.  4 BY MR PIFKO:  5 Q. Well, when you came into the  6 position, you undertook an effort to  7 become familiar with what the protocols  8 and processes were, correct?  9 MR. NICHOLAS: Object to the  10 form. Asked and answered a number  11 of times.  12 THE WITNESS: When I joined,  13 I tried to become aware of as much  14 as I could around the entire  15 diversion control program.  16 BY MR PIFKO:  17 Q. And was there any effort in  18 2015 -- or, sorry, 2014, when you joined  19 the company, to collect that kind of  20 information and put it in a usable form?  21 MR. NICHOLAS: Objection.  22 Outside the scope.  23 THE WITNESS: Could you  24 define your question a little bit</p>	<p style="text-align: right;">Page 244</p> <p>1 completely understanding.  2 Did the company have other  3 information like this that it  4 shared with its sales executives?  5 BY MR PIFKO:  6 Q. It's okay. Sorry that you  7 don't understand.  8 A. Sure. Thanks.  9 Q. This is after you joined the  10 company, right?  11 A. Yes.  12 Q. You gave this presentation?  13 A. I did.  14 Q. You had never given this  15 presentation before, right?  16 A. Correct.  17 Q. So my question is, before  18 you had given this presentation, were you  19 aware of whether there was any effort by  20 the company to obtain this type of  21 red-flag information from sales  22 associates and use it in their efforts to  23 prevent diversion?  24 MR. NICHOLAS: Well,</p>
<p style="text-align: right;">Page 243</p> <p>1 more? Because it's a little bit  2 open-ended.  3 BY MR PIFKO:  4 Q. These red flags of diversion  5 we're talking about, and specifically  6 we're talking about the training that was  7 done and how sales associates can make  8 observations that could help the company  9 in its efforts to prevent diversion.  10 And what I'm asking you is  11 whether you're -- if you're aware of  12 whether the company had any processes or  13 procedures to obtain and use that  14 information, in 2014, to prevent  15 diversion?  16 MR. NICHOLAS: Objection.  17 Form. And outside the scope.  18 THE WITNESS: So I guess I'm  19 a little confused, because this  20 would be an example of the  21 training that we provided to our  22 sales staff.  23 And maybe I'm missing  24 something. I'm still not</p>	<p style="text-align: right;">Page 245</p> <p>1 objection to the form. And to the  2 scope. And I think it's a  3 misleading question in light of  4 what the witness has just said  5 back to you.  6 THE WITNESS: As I responded  7 previous, there was some training  8 that was done, prior to my  9 arrival, of the sales staff. And  10 I remember seeing some  11 documentation, whether it was a  12 PowerPoint presentation, I don't  13 recall specifically what that was,  14 where similar training was  15 provided to our sales staff.  16 I can't really comment on  17 the specific content at this  18 point, because it was something  19 that I viewed among everything  20 else around our diversion control  21 program when I walked through the  22 doors.  23 BY MR PIFKO:  24 Q. Do you know if there were</p>

<p style="text-align: right;">Page 246</p> <p>1 any systems in place to collect 2 information and use it at the time that 3 you joined, that type of information? 4 MR. NICHOLAS: Objection. 5 Form. Scope. And there was 6 questioning on this yesterday of a 7 witness for whom this was within 8 the scope of his 30(b)(6) 9 deposition. 10 THE WITNESS: Again, collect 11 this type of information. So 12 diversion red flags for sales 13 executives. Again, my response 14 would be the same. I recall some 15 training that was given. The 16 content of the training, I 17 don't -- I don't recall. 18 BY MR PIFKO: 19 Q. My question is not about the 20 training. It's about whether there was 21 processes and protocols in place to use 22 information that sales associates might 23 have provided from these red flags of 24 diversion. That's what I'm asking you.</p>	<p style="text-align: right;">Page 248</p> <p>1 (Whereupon, 2 AmerisourceBergen-May Exhibit-10, 3 ABDCMDL 00159072, was marked for 4 identification.) 5 - - - 6 BY MR PIFKO: 7 Q. I'm handing you what's 8 marked as Exhibit-10. Sorry, I handwrote 9 the date on the copy, I thought it was 10 mine. That's the only writing that's on 11 there. 12 For the record, this is a 13 document Bates labeled ABDCMDL 00159072. 14 Take a moment to review this 15 and let me know when you're done. 16 For the record, it's dated 17 October 6th, 2016. The custodian is 18 David May. The file name is NADDI 19 slides. 20 A. Okay. 21 Q. Have you seen this before? 22 A. I recognize the content as 23 content that I delivered to a NADDI 24 training conference, NADDI being National</p>
<p style="text-align: right;">Page 247</p> <p>1 MR. NICHOLAS: Objection. 2 BY MR PIFKO: 3 Q. And to be clear, I'm asking 4 you in your personal capacity. 5 MR. NICHOLAS: Okay. 6 Objection. Asked and answered a 7 number of times. This is 8 repetitive. 9 THE WITNESS: In terms of 10 the latter part of your question, 11 whether there were protocols in 12 place, I don't know. 13 MR PIFKO: Let's take a 14 break. 15 VIDEO TECHNICIAN: Going off 16 record. 2:17 p.m. 17 - - - 18 (Whereupon, a brief recess 19 was taken.) 20 - - - 21 VIDEO TECHNICIAN: We're 22 back on record. The time is 2:32 23 p.m. 24 - - -</p>	<p style="text-align: right;">Page 249</p> <p>1 Association of Drug Diversion 2 Investigators. 3 Q. What was the purpose of this 4 presentation? 5 A. Again, it was intended to be 6 educational for the law enforcement 7 community about who wholesale 8 distributors were and how we could assist 9 them in their efforts. 10 Q. This is a presentation that 11 you gave to that organization on or 12 around October 2016? 13 A. So I've given two 14 presentations. I believe this is the 15 first presentation, yes. 16 Q. And you believe it was some 17 time in October 2016? 18 A. I don't have anything that's 19 dated, but -- I'd have to actually 20 confirm the date unless there's some 21 other document you can point me to that I 22 can confirm the date. 23 Q. I can just tell you that the 24 data associated with the document said</p>

<p style="text-align: right;">Page 250</p> <p>1 that it was dated October 6th, 2016.</p> <p>2 A. So let's assume it's around</p> <p>3 that time period.</p> <p>4 If I created the document,</p> <p>5 then, presumably, it would have been in</p> <p>6 relation time-wise to when I gave the</p> <p>7 presentation.</p> <p>8 Q. Let's go to -- well, the</p> <p>9 first slide.</p> <p>10 Do you see the language on</p> <p>11 the first page here in the notes,</p> <p>12 McKesson, Cardinal and AmerisourceBergen</p> <p>13 have a combined market share in excess of</p> <p>14 90 percent?</p> <p>15 A. Yes.</p> <p>16 Q. Do you agree with that</p> <p>17 statement?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: Again, I would</p> <p>21 have researched that at that time</p> <p>22 period and derived information</p> <p>23 from others at the time period</p> <p>24 when this was given.</p>	<p style="text-align: right;">Page 252</p> <p>1 form. Objection to the scope.</p> <p>2 Asked and answered.</p> <p>3 THE WITNESS: And I would</p> <p>4 rely upon my previous response as</p> <p>5 well. And restate it.</p> <p>6 I can't sit here and speak</p> <p>7 to the programs or market share</p> <p>8 relative to Cardinal and McKesson.</p> <p>9 I can say that, regardless of</p> <p>10 market share, regardless of being</p> <p>11 AmerisourceBergen or one of the</p> <p>12 other 800 wholesale distributors,</p> <p>13 it's not about market share, it's</p> <p>14 really about everyone doing what</p> <p>15 they're supposed to be doing.</p> <p>16 BY MR PIFKO:</p> <p>17 Q. And that's how we prevent</p> <p>18 diversion and prevent the opioid crisis?</p> <p>19 MR. NICHOLAS: Object to the</p> <p>20 form. Object to the scope.</p> <p>21 THE WITNESS: I'll rely on</p> <p>22 my previous response.</p> <p>23 BY MR PIFKO:</p> <p>24 Q. Well, you said regardless of</p>
<p style="text-align: right;">Page 251</p> <p>1 I recognize that the</p> <p>2 information I received, I assume</p> <p>3 that it was correct, that was</p> <p>4 provided to me. And it's a</p> <p>5 general estimate.</p> <p>6 BY MR PIFKO:</p> <p>7 Q. Do you recall before we were</p> <p>8 talking about market share?</p> <p>9 A. I do.</p> <p>10 Q. And I had a question about</p> <p>11 whether if you believed that the three</p> <p>12 distributors with almost all of the</p> <p>13 market share played any role in the</p> <p>14 opioid epidemic.</p> <p>15 Do you recall that</p> <p>16 discussion?</p> <p>17 A. I do.</p> <p>18 Q. So now seeing the data, do</p> <p>19 you believe that the entities who</p> <p>20 controlled 90 percent of the</p> <p>21 pharmaceutical distribution market had an</p> <p>22 ability to take actions that would have</p> <p>23 reduced the impact on the opioid crisis?</p> <p>24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 253</p> <p>1 market share, regardless of being</p> <p>2 AmerisourceBergen or one of the other 800</p> <p>3 wholesale distributors, it's not about</p> <p>4 market share, it's about, really,</p> <p>5 everyone doing what they're supposed to</p> <p>6 be doing.</p> <p>7 What's everybody supposed to</p> <p>8 be doing?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form. Object to the scope.</p> <p>11 Object to the cross-examination of</p> <p>12 the witness by his very last</p> <p>13 answer. I'll object.</p> <p>14 THE WITNESS: Again, from</p> <p>15 your question, I understand you to</p> <p>16 mean that, because of market</p> <p>17 share, that that market share</p> <p>18 somehow gives us some influence</p> <p>19 over the opioid issue. And my</p> <p>20 statement is that it's not a</p> <p>21 question of market share. And at</p> <p>22 AmerisourceBergen, we have</p> <p>23 requirements that are put upon us</p> <p>24 and we fulfill those requirements.</p>

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1 BY MR PIFKO:  
2 Q. And if everybody is doing  
3 what they can be doing, that's how you  
4 impact the crisis, correct?  
5 MR. NICHOLAS: Well, object  
6 to the form. Object to the scope.  
7 Object to the fact that you've  
8 asked the question about seven or  
9 eight times, probably more,  
10 probably fifteen or twenty times  
11 today. Asked and answered.  
12 THE WITNESS: I think I  
13 responded several times to this.  
14 And, again, I would just  
15 emphasize that throughout the  
16 closed system, there are different  
17 requirements imposed upon  
18 different registrants. And, yes,  
19 if all registrants comply with  
20 their requirements, then it would  
21 have a positive effect on  
22 diversion control.  
23 BY MR PIFKO:  
24 Q. Let's go to Slide 5, which

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1 is on Page 5.  
2 Are you there?  
3 A. Yes.  
4 Q. There's a picture of a form  
5 and then a discussion below about the  
6 information you collect from your  
7 customers pursuant to the "know your  
8 customer" requirement.  
9 A. Yes.  
10 Q. Do you see that?  
11 Is this the Form 590?  
12 A. Yes.  
13 Q. And let's go up to the  
14 previous slide. Page 4.  
15 You have a comment here that  
16 says, You don't see specific reference to  
17 knowing your customer in the law and  
18 regulations, but you do see repeated  
19 references to the concept in the final  
20 decisions and orders issued relative to  
21 actions taken by DEA against registrants,  
22 as well as in public training sessions by  
23 DEA.  
24 Do you see that?

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1 A. I do.  
2 Q. Do you agree with that  
3 statement?  
4 MR. NICHOLAS: Object to the  
5 form.  
6 THE WITNESS: I do agree  
7 with that statement in the context  
8 of this training. I would also  
9 say that you see reference to due  
10 diligence in other areas as well;  
11 namely being the limited guidance  
12 DEA has furnished in the form of  
13 those memorandum that were shared.  
14 BY MR PIFKO:  
15 Q. And you believe knowing your  
16 customer and due diligence is part of the  
17 requirement to maintain effective  
18 controls to prevent diversion?  
19 MR. NICHOLAS: Object to the  
20 form. Object to the scope.  
21 THE WITNESS: I'm so sorry,  
22 can you repeat your question,  
23 please?  
24 BY MR PIFKO:

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1 Q. Do you believe that knowing  
2 your customer and due diligence is part  
3 of the requirement to maintain effective  
4 controls to prevent diversion?  
5 MR. NICHOLAS: Object to the  
6 form. Object to the scope.  
7 THE WITNESS: I believe that  
8 knowing your customer and due  
9 diligence is an aspect of  
10 AmerisourceBergen's program to  
11 satisfy their requirements.  
12 BY MR PIFKO:  
13 Q. Do you believe that knowing  
14 your customer is required under the law?  
15 MR. NICHOLAS: Object to the  
16 form. Object to the scope. And  
17 he's not a lawyer.  
18 THE WITNESS: Again, without  
19 giving a legal opinion, we have,  
20 as part of our program that we  
21 administer, our diversion control  
22 program, a "know your customer"  
23 component, which we exercise in  
24 order to accomplish due diligence.



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1 BY MR. PIFKO:  
2 Q. Do you believe that's a  
3 necessary component of the program in  
4 order for it to be effective?  
5 MR. NICHOLAS: Object to the  
6 form. Object to the scope.  
7 THE WITNESS: I believe that  
8 it's a requirement that we have at  
9 AmerisourceBergen, and it's one  
10 that we've had in place and it's  
11 part of our program.  
12 BY MR PIFKO:  
13 Q. You don't have a position  
14 about whether it's required?  
15 MR. NICHOLAS: Object to the  
16 form. Object to the scope. Asked  
17 and answered.  
18 THE WITNESS: So, again, I  
19 can't furnish a legal opinion.  
20 What I can say is that I  
21 believe we have and should have a  
22 "know your customer" component;  
23 and we do have a "know your  
24 customer" component at our company

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1 as part of the diversion control  
2 program.  
3 BY MR PIFKO:  
4 Q. Let's go to Page 19.  
5 Are you there?  
6 A. I am.  
7 Q. So the notes that you wrote  
8 here say, Final point, we must be mindful  
9 of our actions in addressing the epidemic  
10 of prescription drug abuse. I will use  
11 the relationship between prescription  
12 opioids and heroin as an example. When I  
13 was overseeing the drug task force in  
14 Charlotte ten years ago, there was a rise  
15 in the influence of Mexican DTOs in  
16 growing the heroin market. The issue was  
17 overwhelming and the cross-culture of  
18 people that were using heroin amazed me.  
19 Over the last couple of years, the  
20 overall tightening of the prescription  
21 opioid market has led to increased heroin  
22 abuse. Having confronted both issues, I  
23 believe that our chances for success are  
24 much better in the public arena working

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1 with pharmacists and doctors.  
2 Do you see that?  
3 A. I do.  
4 Q. Did I read that correctly?  
5 A. You did.  
6 Q. Is that a statement that you  
7 made at the time?  
8 A. It was.  
9 Q. Did you present this to  
10 the -- at the conference, did you make  
11 that statement at the conference?  
12 A. I don't know if I made that  
13 precise statement. These are notes that  
14 I used.  
15 Q. Do you believe these  
16 statements to be true?  
17 MR. NICHOLAS: Object to the  
18 form.  
19 But go ahead.  
20 THE WITNESS: I do.  
21 BY MR PIFKO:  
22 Q. When you say "the overall  
23 tightening of the prescription opioid  
24 market has led to increased heroin

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1 abuse," what do you mean by that?  
2 A. I think there's been several  
3 actions that have been taken where it's  
4 becoming more difficult for people to  
5 receive prescription opioids over time.  
6 And there are a number of different  
7 reasons why.  
8 I think that people who may  
9 be addicted and can no longer get a  
10 prescription opioid, can that cause them  
11 to then go to the illegal market? I  
12 think it can. Has that caused folks to  
13 do that? I think it has.  
14 I guess my only caveat here  
15 is, I can't estimate to what extent that  
16 this is -- where this is prevalent.  
17 Q. You thought this was a  
18 significant enough point to make the  
19 conclusion of your presentation, agree?  
20 MR. NICHOLAS: Object to the  
21 form.  
22 THE WITNESS: I think it was  
23 one of many points I made during  
24 the presentation.

<p style="text-align: right;">Page 262</p> <p>1 BY MR PIFKO:</p> <p>2 Q. This was an impactful point</p> <p>3 you wanted to make at the end of the</p> <p>4 presentation, agree?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: I think all of</p> <p>8 the information I provided during</p> <p>9 the presentation was important for</p> <p>10 the audience, including this</p> <p>11 information.</p> <p>12 BY MR PIFKO:</p> <p>13 Q. Mexican DTO, that just means</p> <p>14 drug trafficking organization?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know who the sponsors</p> <p>17 of NADDI are?</p> <p>18 A. Not off the top of my head,</p> <p>19 I do not.</p> <p>20 Q. Do you know if prescription</p> <p>21 drug manufacturers participate in that</p> <p>22 organization?</p> <p>23 MR. NICHOLAS: Object to the</p> <p>24 form. Objection. Asked and</p>	<p style="text-align: right;">Page 264</p> <p>1 A. I do.</p> <p>2 Q. In the interest of time, I</p> <p>3 won't necessarily read over all of it.</p> <p>4 A. Okay.</p> <p>5 Q. But what does the company do</p> <p>6 with this information?</p> <p>7 MR. NICHOLAS: Object as to</p> <p>8 form. And scope.</p> <p>9 THE WITNESS: So when we are</p> <p>10 onboarding a customer, this</p> <p>11 information is collected during a</p> <p>12 site visit. And then a member of</p> <p>13 the team will receive this</p> <p>14 information and they'll go through</p> <p>15 the form. We have a related form</p> <p>16 that's a checklist. We'll</p> <p>17 validate, to the extent possible,</p> <p>18 the contents of the form.</p> <p>19 And so we would validate</p> <p>20 licenses, where we ask the</p> <p>21 questions. We would collect</p> <p>22 information relative to certain</p> <p>23 estimates of drug usage. We would</p> <p>24 ask about prior disciplinary</p>
<p style="text-align: right;">Page 263</p> <p>1 answered.</p> <p>2 THE WITNESS: I know that</p> <p>3 there are participants both from</p> <p>4 the private and public sector.</p> <p>5 BY MR PIFKO:</p> <p>6 Q. Let's go back to Slide 5.</p> <p>7 This is the Form 590.</p> <p>8 Is the Form 590 an important</p> <p>9 part of AmerisourceBergen's diversion</p> <p>10 control program?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form. Objection as to scope.</p> <p>13 THE WITNESS: I would say</p> <p>14 that all aspects of our program</p> <p>15 are important. I couldn't -- I</p> <p>16 couldn't categorize this as more</p> <p>17 or less important than other</p> <p>18 facets of our program. It's</p> <p>19 another facet of our program.</p> <p>20 BY MR PIFKO:</p> <p>21 Q. So this talks about the</p> <p>22 types of information that are sought in</p> <p>23 the form.</p> <p>24 Do you see that?</p>	<p style="text-align: right;">Page 265</p> <p>1 action. And we would then, you</p> <p>2 know -- again, use public</p> <p>3 resources to collect and validate</p> <p>4 the information that's on the</p> <p>5 form, wherever possible; go to the</p> <p>6 various boards, Board of Pharmacy,</p> <p>7 boards of medicine, if we have</p> <p>8 physician information, check for</p> <p>9 prior disciplinary action.</p> <p>10 And after that process is</p> <p>11 complete, we would make a decision</p> <p>12 whether we wanted to continue with</p> <p>13 the onboarding of the prospective</p> <p>14 customer.</p> <p>15 BY MR PIFKO:</p> <p>16 Q. Is there any effort, within</p> <p>17 the time frame that you're the 30(b)(6)</p> <p>18 witness, to update that information after</p> <p>19 a customer is onboarded?</p> <p>20 A. There are times that we</p> <p>21 update this information, yes. There may</p> <p>22 be changes at the location. If there is</p> <p>23 a change of address, of course that would</p> <p>24 affect the license of the location, so we</p>



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1 would need to update that information.  
2 If there was a change of  
3 ownership and the location didn't move,  
4 but we needed to get the new information  
5 on ownership. And we would also do it on  
6 an as-needed bases. For example, if we  
7 were involved with the customer, in terms  
8 of trying to mitigate some red flag  
9 information, we may request an updated  
10 form.  
11 Q. Let's turn to Slide 17.  
12 I'll read you from the notes  
13 here. This is -- the image on Slide 17  
14 is an image of The Controlled Substances  
15 Act closed system of distribution, agree?  
16 A. Yes.  
17 Q. You have a statement here  
18 that says, I truly believe that if we all  
19 live up to our individual  
20 responsibilities and obligations, we will  
21 collectively have a huge, positive impact  
22 on the prescription abuse issue. On the  
23 other hand, any weak links in the system  
24 will cause all of us to become less

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1 effective.  
2 Do you see that?  
3 A. I do.  
4 Q. Do you agree with that  
5 statement?  
6 MR. NICHOLAS: Object to the  
7 form.  
8 THE WITNESS: I do. And I  
9 guess in the context, again, of  
10 this meeting, if we start to make  
11 this a full statement, and, I  
12 guess, just as a point of  
13 demonstrating our consistency, you  
14 know, we all -- registrants have  
15 regulations from requirements  
16 imposed upon us by virtue of our  
17 role in the system. I think I've  
18 answered that several times today.  
19 And I believe that if we all  
20 live up to those roles, we'll  
21 collectively have a positive  
22 impact. I believe that to be  
23 true, and I think I've been pretty  
24 consistent about that.

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1 BY MR. PIFKO:  
2 Q. You then say, To that end, a  
3 wholesaler is responsible for knowing the  
4 customer and monitoring the controlled  
5 substances and listed chemicals shipped  
6 to that customer, rejecting and reporting  
7 suspicious orders.  
8 Do you see that?  
9 A. I do.  
10 Q. Do you agree with that  
11 statement?  
12 MR. NICHOLAS: Object to the  
13 form.  
14 THE WITNESS: I agree with  
15 the statement.  
16 - - -  
17 (Whereupon,  
18 AmerisourceBergen-May Exhibit-11  
19 ABDCMDL 00140843-44, was marked  
20 for identification.)  
21 - - -  
22 BY MR. PIFKO:  
23 Q. I'm handing you what is  
24 marked as Exhibit-11. For the record,

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1 it's a two-page document, Bates labeled  
2 ABDCMDL 00140843 through 44.  
3 Have you seen this before?  
4 A. Not directly on here. But I  
5 am included on distribution to CSRA OMP,  
6 and so I have some recollection of this  
7 e-mail.  
8 Q. Well, let's just talk  
9 generally. You can put this document  
10 aside for a minute.  
11 A. Sure.  
12 Q. Do you recall there being  
13 issues with deficiencies with the Form  
14 590s?  
15 A. I do recall, generally  
16 speaking, there have been some occasions  
17 where we'll have forms where they are not  
18 completely legible, and there may have  
19 also been occasions where not all of the  
20 responses were provided.  
21 Q. And the company was  
22 undertaking efforts to try to address  
23 these deficiencies in 2016; is that  
24 correct?

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1 MR. NICHOLAS: Object to the  
2 form of the question, as it wasn't  
3 his testimony.  
4 Go ahead.  
5 THE WITNESS: Again, I guess  
6 I'll comment that, generally  
7 speaking, we're always trying to  
8 be vigilant to maintain our  
9 processes. So I wouldn't identify  
10 it as any particular time. It's  
11 an ongoing process.  
12 - - -  
13 (Whereupon,  
14 AmerisourceBergen-May Exhibit-12,  
15 ABDCMDL 00159415-16, was marked  
16 for identification.)  
17 - - -  
18 BY MR PIFKO:  
19 Q. I'm handing you what's  
20 marked as Exhibit-12. This document is  
21 Bates labeled ABDCMDL 00159415 and 16.  
22 Have you seen this document  
23 before?  
24 And you can continue to

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1 review it, I'm just trying to speed  
2 things along for everybody.  
3 A. I have, yes.  
4 Q. Do you know what this is?  
5 A. It's an e-mail string  
6 regarding the CSRA 590 validation  
7 project.  
8 Q. And the e-mail in the bottom  
9 of the first page, you are cc'd on there,  
10 correct?  
11 A. Yes.  
12 Q. It's dated August 5th, 2016,  
13 correct?  
14 A. Correct.  
15 Q. Do you recall receiving this  
16 e-mail?  
17 A. I recognize the content and  
18 recall the e-mail.  
19 Q. When was the last time you  
20 saw this e-mail?  
21 A. I haven't seen it recently.  
22 Probably at that time.  
23 Q. Is this a true and correct  
24 copy of the e-mail?

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1 A. Yes.  
2 Q. It says here that, Over the  
3 past several months, the CSRA diversion  
4 control team -- that's your team,  
5 correct?  
6 A. Yes.  
7 Q. -- has been working on the  
8 CSRA 590 validation project. This  
9 project was initiated to validate that  
10 all current ABDC customers authorized to  
11 purchase controlled substances have the  
12 required due diligence documentation in  
13 file.  
14 Do you see that?  
15 A. Yes.  
16 Q. Do you agree that that was  
17 what the project was?  
18 MR. NICHOLAS: Object to the  
19 form.  
20 THE WITNESS: Yes.  
21 BY MR PIFKO:  
22 Q. It says, The first phase of  
23 this project was to conduct a full review  
24 of every ABDC customer authorized to

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1 purchase controlled substances and  
2 identify any with deficiencies.  
3 Did I read that right?  
4 A. Yes.  
5 Q. This initial phase has been  
6 completed, and a substantial number of  
7 customers have been identified who will  
8 be required to have their 590  
9 documentation updated. See attached  
10 spreadsheet.  
11 Do you see that?  
12 A. I do.  
13 Q. Then you write back  
14 approximately a year later.  
15 Do you see the top e-mail  
16 from you dated July 7th, 2017?  
17 A. Yes.  
18 Q. And you say, All, I wanted  
19 to check in with you on the progress  
20 being made on this project.  
21 Unfortunately, as of this writing, we  
22 have only received about 10 percent of  
23 the required customer due diligence  
24 documents. If you recall, we originally

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1 set a June 30th -- set June 30th as a  
2 completion date for the continued -- let  
3 me start over on that sentence.  
4 If you recall, we originally  
5 set June 30th as a completion date and  
6 the continued deficiency puts us at risk  
7 with regulators.  
8 Do you see that?  
9 A. I do.  
10 Q. Do you agree with that  
11 statement?  
12 MR. NICHOLAS: Object to the  
13 form.  
14 THE WITNESS: Yes.  
15 BY MR PIFKO:  
16 Q. And you wrote that in this  
17 e-mail?  
18 A. Yes.  
19 Q. Do you know how many 590  
20 forms were missing or had missing  
21 information?  
22 A. I believe there was  
23 approximately 3,000.  
24 But I do want to get back to

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1 one thing while you were reading there.  
2 You stated, when you started reading the  
3 second part of this e-mail, that almost a  
4 year later I responded. And I just want  
5 to address that.  
6 This was an e-mail that was  
7 sent to sales executives. I don't want  
8 to leave you with the impression that  
9 there were not other multiple e-mails  
10 related to this e-mail and dispel that  
11 notion that there was this one e-mail and  
12 then there was this one e-mail to these  
13 sales executives.  
14 I don't know what other  
15 e-mails are out there, but I know that  
16 there was a lot of communication relative  
17 to this project.  
18 Q. Okay. Understood.  
19 All I wanted to point out  
20 with the year date difference is that  
21 we're a year later, and that a year later  
22 after sending the original e-mail about  
23 this project, only 10 percent of the  
24 required documents had been obtained,

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1 agree?  
2 MR. NICHOLAS: Object to the  
3 form as to his agreeing as to what  
4 you were trying to point out.  
5 THE WITNESS: I understood  
6 that part of your question.  
7 But I didn't want to, again,  
8 leave the impression that an  
9 e-mail was sent on August 5th and  
10 then I didn't respond until a year  
11 later.  
12 BY MR PIFKO:  
13 Q. I didn't think that that was  
14 the case.  
15 - - -  
16 (Whereupon,  
17 AmerisourceBergen-May Exhibit-13,  
18 Tab Printout; Sales Assignment,  
19 was marked for identification.)  
20 - - -  
21 BY MR PIFKO:  
22 Q. I just put in front of you  
23 Exhibit-13.  
24 You see that this e-mail

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1 references having an attachment of a 590  
2 validation master spreadsheet --  
3 A. Yes.  
4 Q. -- dated July 28th, 2016?  
5 Do you see that? You've got  
6 to go to Exhibit-12, if you look at the  
7 header of the e-mail.  
8 A. Yes. Attachment. I see it.  
9 Q. So if you go over to  
10 Exhibit-13, there were three tabs in the  
11 document, or four tabs. This is one of  
12 the tabs, it's called, Sales Assignment.  
13 Do you know what this tab  
14 reflects?  
15 MR. NICHOLAS: Where is the  
16 tab? I'm sorry.  
17 MR PIFKO: It was produced  
18 natively, but what we do when we  
19 produce these is Bates label -- to  
20 use it as an exhibit, the Bates  
21 label is at the top and the tab is  
22 on a footer on the bottom.  
23 THE WITNESS: Again, in the  
24 context of this e-mail, and this

<p style="text-align: right;">Page 278</p> <p>1 being represented as one of the  2 attachments, this appears to be a  3 list, in the left column, customer  4 DEA number. And we tracked the  5 DEA registration.  6 And then it tells the  7 various sales folks that are  8 assigned to the registration. And  9 that would have been produced to  10 help us organize this work.  11 BY MR PIFKO:  12 Q. And this is a list of all  13 the customers whose Form 590 was missing,  14 correct, or --  15 MR. NICHOLAS: Object to the  16 form.  17 BY MR. PIFKO:  18 Q. -- had deficient  19 information?  20 MR. NICHOLAS: Object to the  21 form.  22 THE WITNESS: Again, I know  23 we compiled the list. I know we  24 keep a spreadsheet of it. I'm not</p>	<p style="text-align: right;">Page 280</p> <p>1 revolved around finding situations  2 where we didn't have the  3 documentation in the file. And  4 that's what was the focus of the  5 file.  6 So that's the first --  7 BY MR PIFKO:  8 Q. What's the difference  9 between not having the information and it  10 not being in the file?  11 MR. NICHOLAS: Object to the  12 form.  13 BY MR PIFKO:  14 Q. If it's not in the file, you  15 don't have the information, agree?  16 If I don't have anything in  17 my hand, I don't have anything in my  18 hand.  19 A. So --  20 MR. NICHOLAS: Object to the  21 form.  22 THE WITNESS: So, again, I  23 just want to make sure that we  24 understand the context of the</p>
<p style="text-align: right;">Page 279</p> <p>1 sure, in looking at this, you  2 know, multi-page document, if this  3 is an accurate description.  4 I guess what I'll say is  5 that -- well, a couple of things  6 that I want to put in context  7 here.  8 First, in terms of this work  9 itself, and maybe I misinterpreted  10 your question, but this would  11 represent -- this project would  12 represent cases where we could not  13 locate due diligence files, in  14 terms of our customer base, and as  15 a result of that, where we could  16 not locate those due diligence  17 files, we initiated this project.  18 And I guess that's  19 important, I guess, to realize  20 as -- I don't want to leave the  21 impression that we didn't have due  22 diligence for these customers. I  23 want to make sure that we all  24 understand that this project</p>	<p style="text-align: right;">Page 281</p> <p>1 project.  2 And that is that we  3 identified a number of accounts  4 where we couldn't locate the  5 information.  6 My point there is I'm not  7 acknowledging that there were not  8 due diligence efforts made in  9 documentation collected. At the  10 time of this review, we couldn't  11 find that information. And that's  12 what this project involved.  13 So that's just to put this  14 in context.  15 The second part, again, do  16 these represent a part of or the  17 totality of those accounts, I  18 can't say by looking at this  19 stack.  20 BY MR PIFKO:  21 Q. Is that stack pretty large?  22 MR. NICHOLAS: Object to the  23 form.  24 THE WITNESS: Again, I think</p>

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1 you asked a question about how  
2 many accounts there were. I  
3 think, to my recollection, there  
4 were roughly 3,000 when we  
5 initiated that, to the best of my  
6 recollection.  
7 BY MR PIFKO:  
8 Q. That stack of customers,  
9 though, how thick is that in front of  
10 you?  
11 MR. NICHOLAS: Well, object  
12 to the form.  
13 BY MR PIFKO:  
14 Q. Can you hold it up?  
15 A. It's about an inch thick, I  
16 guess.  
17 Q. Can you hold it up?  
18 A. Sure.  
19 MR. NICHOLAS: Objection.  
20 Object to the form.  
21 BY MR PIFKO:  
22 Q. Thank you.  
23 MR. NICHOLAS: Showboating.  
24 BY MR PIFKO:

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1 Q. If I tell you that the  
2 number of files where you could not  
3 obtain the due diligence information as  
4 of 2016, the number of customers was  
5 3,285, would you agree with me?  
6 MR. NICHOLAS: I'll object  
7 to the form. The witness has  
8 already given testimony on this.  
9 But I'll object to the form of the  
10 question.  
11 THE WITNESS: My response  
12 was I think there was  
13 approximately 3,000, so I think  
14 that's pretty consistent.  
15 BY MR PIFKO:  
16 Q. So did you continue to  
17 obtain this -- attempt to obtain this  
18 information over the years?  
19 A. Yes.  
20 Q. Do you know what the status  
21 of this project was as of 2017?  
22 A. I cannot say definitively  
23 what the status was in 2017.  
24 Q. Do you know if these

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1 deficiencies have been remedied as of May  
2 29th, 2018?  
3 MR. NICHOLAS: Object to the  
4 form.  
5 THE WITNESS: I think the  
6 project, in terms of its  
7 completion -- and, again, I have  
8 to estimate this -- is in the 60  
9 percent range of completion, but  
10 that's the best of my knowledge,  
11 just sitting here today with no  
12 documentation.  
13 BY MR PIFKO:  
14 Q. At the present time, your  
15 estimate, based on your involvement with  
16 the project, is that there's still about  
17 40 percent of them that have not been  
18 rectified yet?  
19 MR. NICHOLAS: Object to the  
20 form.  
21 THE WITNESS: That's my best  
22 estimate, based upon my  
23 recollection.  
24 BY MR PIFKO:

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1 Q. Thank you.  
2 A. But I think I'm in the  
3 ballpark.  
4 Q. Do you know when the Form  
5 590 process was implemented?  
6 A. Not precisely when.  
7 Approximately when, I believe it was  
8 around 2007, in terms of that particular  
9 form. There may have been predecessors  
10 that I can't comment on.  
11 I'm not the best person to  
12 talk about what the due diligence efforts  
13 looked like prior to then.  
14 - - -  
15 (Whereupon,  
16 AmerisourceBergen-May Exhibit-14,  
17 ABDCMDL 00002232, was marked for  
18 identification.)  
19 - - -  
20 BY MR PIFKO:  
21 Q. I'm handing you what's  
22 marked as Exhibit-14.  
23 For the record, this is a  
24 one-page document Bates labeled ABDCMDL



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1 00002232. It's some e-mails dated  
2 December 9th, 2016.  
3 Let me know when you're done  
4 reviewing this.  
5 A. Okay.  
6 Q. Have you seen this e-mail  
7 before?  
8 A. I have, during -- I guess it  
9 would be December 9th, 2016.  
10 Q. Do you recall the discussion  
11 in this e-mail?  
12 A. Generally, based upon the  
13 content.  
14 Q. Is this a true and correct  
15 copy of the e-mail?  
16 A. Yes.  
17 Q. Can you tell me about what's  
18 discussed in the e-mail here?  
19 MR. NICHOLAS: Object to the  
20 form.  
21 THE WITNESS: You know,  
22 according to the content here that  
23 I'll rely upon, it's an exchange  
24 between a member of Purdue's

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1 compliance group and Eric  
2 Cherveny, who works on our  
3 diversion control team, about  
4 media reports relative to  
5 physicians.  
6 BY MR PIFKO:  
7 Q. Eric says, FYI, Purdue  
8 Pharma sends me this list periodically.  
9 It's a list that Purdue maintains  
10 regarding prescriber action. Not sure  
11 how they collect the data. Yellow  
12 highlighting indicates new action since  
13 the last submission. Blue highlighting  
14 indicates a physician who was on a  
15 previous report but who has had  
16 subsequent action. We need to discuss if  
17 we're going to use this list and, if so,  
18 how.  
19 Do you see that?  
20 A. I do.  
21 Q. Do you recall getting this  
22 list from Purdue Pharma?  
23 A. I do not recall whether we  
24 did or did not get that list from Purdue

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1 Pharma. And I'm guessing, from the  
2 context here I'm seeing as you just read  
3 it, Eric is stating that he doesn't know  
4 how they provide the information. But  
5 from the lower e-mail, it looks like it's  
6 generated from media reporting.  
7 Q. Do you recall getting this  
8 list and doing anything with it?  
9 MR. NICHOLAS: Object to the  
10 form of the question. Asked and  
11 answered.  
12 THE WITNESS: So, yeah, just  
13 to repeat my response, I don't  
14 know whether we did or did not get  
15 a copy of that list.  
16 I do know, as part of our  
17 program, we do maintain a -- what  
18 we refer to as a suspect  
19 subscriber list, which is distinct  
20 from this list. I don't know if  
21 Eric added this information to  
22 that list or not at this point.  
23 BY MR PIFKO:  
24 Q. The suspect subscriber list,

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1 can you tell me what that is?  
2 A. Again, when we receive  
3 information relative to doctors, we  
4 receive the DEA reports, the register  
5 reports, as they come out, where DEA  
6 announces their actions they've taken  
7 against practitioners.  
8 So if we were to receive one  
9 of those reports where they've taken an  
10 action against a practitioner, we would  
11 add that information to the list so that  
12 in doing our due diligence, if we came  
13 across those doctors, we would have that  
14 information.  
15 Q. Does AmerisourceBergen --  
16 sorry.  
17 With respect to the suspect  
18 subscriber list, do you know when that  
19 effort to collect that list was  
20 initiated?  
21 MR. NICHOLAS: Objection  
22 only as to scope.  
23 THE WITNESS: Previous to my  
24 arrival. It was -- to my

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1 recollection, it existed when I  
2 arrived.  
3 BY MR PIFKO:  
4 Q. With respect to the suspect  
5 subscriber list, do you know if it was  
6 AmerisourceBergen's practice to inform  
7 customers in the area where the suspect  
8 prescribers were about these physicians  
9 and that they shouldn't fill  
10 prescriptions from them if they had their  
11 licenses revoked?

12 MR. NICHOLAS: Objection as  
13 to scope.

14 THE WITNESS: Well, the  
15 answer is no. And I'm not even  
16 sure how we would do that.

17 BY MR PIFKO:

18 Q. How about with respect to  
19 this list that Purdue Pharma sent you,  
20 was there ever any effort to communicate  
21 the company's knowledge of these  
22 prescribers of concern identified by  
23 Purdue to customers in the area where  
24 these physicians were?

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1 MR. NICHOLAS: Objection to  
2 the form of the question. The  
3 witness has twice said he doesn't  
4 know whether they received the  
5 list or not. So I don't want  
6 there to be a misleading record  
7 here.

8 THE WITNESS: Same response.  
9 I'm not sure what the outcome of  
10 this e-mail string was relative to  
11 the list provided by Purdue at  
12 this time.

13 BY MR PIFKO:

14 Q. Well, if there was a  
15 practice of sharing it with your  
16 customers, you would be aware of that,  
17 right?

18 MR. NICHOLAS: Object to the  
19 form.

20 THE WITNESS: I'm not  
21 aware -- again, I've answered the  
22 question.

23 But I'm not aware of us  
24 sharing information, through some

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1 broadcasting, to our customers in  
2 particular areas. Again, I don't  
3 even know how we would do that.

4 And I guess along that  
5 point, the obligation of the  
6 pharmacist really is preeminent  
7 when it comes to knowing the  
8 physicians for whom he's filling  
9 prescriptions under his  
10 corresponding responsibility.

11 So, again, that would be an  
12 area that, as a wholesale  
13 distributor, you know, that's --  
14 that's within the responsibility  
15 of the pharmacist, in my view.

16 BY MR PIFKO:

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

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24 [REDACTED]

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1 [REDACTED]  
2 MR. PIFKO: We're going to  
3 take a short break.  
4 VIDEO TECHNICIAN: Going off  
5 the record. 3:30 p.m.  
6 - - -  
7 (Whereupon, a brief recess  
8 was taken.)  
9 - - -  
10 VIDEO TECHNICIAN: We're  
11 back on record at 3:44 p.m.  
12 MR. NICHOLAS: There was  
13 testimony in the previous set of  
14 questions about a list of --  
15 concerning a list of due diligence  
16 files that were missing or not  
17 available. And there was  
18 testimony about the fact that  
19 there was approximately 3,000 such  
20 documents -- 3,000 such files.  
21 There was also testimony  
22 about the fact that these files  
23 were contained or illustrated or  
24 displayed on three different tabs,

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1 or maybe it was four different  
2 tabs.  
3 MR. CLUFF: I believe it's  
4 four tabs.  
5 MR. NICHOLAS: Okay. We  
6 have gone back, on the break, we  
7 have not talked to the witness  
8 about this, and checked the tabs  
9 and checked the stack of -- the  
10 stack of -- that you displayed,  
11 that you gave him, that purports  
12 to represent the 3,000 files.  
13 This stack is a stack of  
14 approximately 13,000 files. It is  
15 not -- it does not display the  
16 3,000 that you discussed. The  
17 3,000 that you discussed are  
18 contained in Tabs 1 and Tabs 2,  
19 which are identified as a red tab  
20 and a blue tab. If you print  
21 those out and add them up, it does  
22 appear to be about 3,000 or so.  
23 So what I'm seeing is that  
24 you gave him a list -- a stack of

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1 13,000, which does not represent  
2 what you said it did; you asked  
3 him questions about it; and then  
4 you even had him hold it up on  
5 camera.  
6 Now, I'm going to ask you to  
7 withdraw the line of questioning.  
8 MR. PIFKO: I will not  
9 withdraw the line of questioning.  
10 MR. NICHOLAS: And I will  
11 ask you to correct the record.  
12 MR. PIFKO: We can meet and  
13 confer about it after this  
14 deposition.  
15 MR. NICHOLAS: Wait a  
16 minute. Hold on.  
17 MR. PIFKO: I do not know  
18 the facts that you are  
19 representing to be true.  
20 MR. NICHOLAS: We can check  
21 right now. We have it right here.  
22 I can show it to you in two  
23 seconds. I have the tabs.  
24 MR. PIFKO: We can do it off



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1 the record. I'll be happy to look  
2 at it off the record.  
3 If you want to go off the  
4 record, I can take a look.  
5 MR. NICHOLAS: Let's go off  
6 the record, and you'll take a look  
7 and then you tell me what you want  
8 to do about it.  
9 VIDEO TECHNICIAN: Going off  
10 the record. 3:46 p.m.  
11 - - -  
12 (Whereupon, a discussion off  
13 the record occurred.)  
14 - - -  
15 VIDEO TECHNICIAN: We're  
16 back on record at 3:58 p.m.  
17 MR. PIFKO: Let me represent  
18 that when we went off the record,  
19 counsel for defendants is stating  
20 things to be facts, based on their  
21 research of documents, in front of  
22 the witness and trying to  
23 influence the outcome of this  
24 deposition and making accusations

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1 about improper conduct that we, in  
2 his mind, allegedly did.  
3 I can assure you that we had  
4 no intention to misrepresent a  
5 document or the record. We asked  
6 the witness what it was.  
7 And to be frank with you, if  
8 you want to cross -- or if you  
9 want to direct examine your  
10 witness about something  
11 afterwards, that is the  
12 appropriate way to handle it.  
13 And what you've done by  
14 making these statements about what  
15 facts you believe to be true in  
16 front of the witness and in front  
17 of all counsel here in the room is  
18 you have tainted the process and  
19 you testified and you created  
20 facts.  
21 And that -- you are done  
22 with this whole thing. You lost  
23 your opportunity to get the  
24 witness to say, on his own

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1 volition, what it is or isn't.  
2 MR. NICHOLAS: Okay. Let's  
3 make sure the record is clear.  
4 MR. PIFKO: It's -- I'm  
5 taking this deposition. You're  
6 not talking anymore.  
7 MR. NICHOLAS: No, no. I'm  
8 going to talk, okay?  
9 BY MR. PIFKO:  
10 Q. Sir, I'm going to hand you  
11 Exhibit --  
12 MR. NICHOLAS: I'm going to  
13 talk. Because you haven't let  
14 me -- we went off the record so  
15 you --  
16 MR. PIFKO: No. No. We're  
17 done. You are not talking during  
18 this deposition. I am taking this  
19 deposition, okay?  
20 MR. NICHOLAS: We went off  
21 the record so we could show you  
22 the basis for why I'm saying --  
23 MR. PIFKO: And you did not  
24 show an adequate basis.

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1 MR. NICHOLAS: Well, that's  
2 what you say. You looked at it.  
3 Now, what you're telling  
4 me --  
5 MR. PIFKO: And did all of  
6 this in front of the witness.  
7 This is totally improper.  
8 MR. NICHOLAS: I'm going to  
9 ask you --  
10 MR. PIFKO: I'm not  
11 listening to you. It's my  
12 deposition. You need to be quiet.  
13 If you want to meet --  
14 MR. NICHOLAS: Hold on.  
15 Hold on.  
16 MR. PIFKO: If you want to  
17 meet and confer with me about  
18 something after this deposition,  
19 I'll be happy to listen to you.  
20 MR. NICHOLAS: Listen to  
21 your question before you say that.  
22 Listen to the question you asked  
23 on the record.  
24 MR. MAHADY: Question: And

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1 this is a list of all --  
2 MR. PIFKO: You're  
3 continuing to influence the  
4 process --  
5 MR. MAHADY: -- incorrect or  
6 deficient --  
7 MR. NICHOLAS: I'll read it.  
8 Question by you, Mr. Pifko:  
9 And this is all -- and this is a  
10 list of all the customers whose  
11 Form 590 was missing, correct? Or  
12 had deficient information?  
13 MR. PIFKO: And then I asked  
14 him, is that true?  
15 And he can say whatever he  
16 can say. If I'm wrong, I'm wrong.  
17 He can say whatever he said. He  
18 answered.  
19 I didn't -- I can't put  
20 facts into his mind.  
21 MR. NICHOLAS: You  
22 deliberately --  
23 MR. PIFKO: I did not  
24 deliberately do anything.

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1 MR. NICHOLAS: Not only did  
2 you deliberately print the wrong  
3 list, but then you had him hold  
4 the list up.  
5 MR. PIFKO: You have no  
6 evidence I deliberately printed  
7 anything.  
8 MR. NICHOLAS: Are you  
9 denying it?  
10 MR. PIFKO: Yes. I did not  
11 deliberately --  
12 MR. NICHOLAS: Are you  
13 denying that you did not know --  
14 you did not know this is the wrong  
15 list?  
16 MR. PIFKO: I did not  
17 deliberately do anything here.  
18 MR. NICHOLAS: Do you agree  
19 this is the wrong list?  
20 MR. PIFKO: No. Based on  
21 what you've shown, I do not know  
22 that that's the wrong list.  
23 MR. MAHADY: So you skipped  
24 the first three tabs, went to Tab

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1 4 and ignored the summary?  
2 MR. PIFKO: We had the  
3 summary. And I just read him the  
4 summary, and I asked him if that  
5 was the number. I read the exact  
6 number, you all heard it, 3,285.  
7 That was the number. I asked him  
8 if that was the number.  
9 MR. NICHOLAS: Yes. We're  
10 all agreeing that there were  
11 approximately -- the record says  
12 what it says --  
13 MR. PIFKO: Right. So  
14 there's no --  
15 MR. NICHOLAS: -- which is  
16 approximately 3,000 files.  
17 MR. PIFKO: So there's no --  
18 there's no problem with the  
19 record.  
20 MR. NICHOLAS: You gave him  
21 a stack of 13,000 --  
22 MR. PIFKO: There's no  
23 problem with the record.  
24 MR. NICHOLAS: -- and asked

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1 him if that is the list of 3,000.  
2 MR. CLUFF: Let me just ask  
3 one question here.  
4 Do you agree that that is a  
5 tab from the spreadsheet in  
6 question?  
7 MR. NICHOLAS: It is the  
8 wrong -- no.  
9 MR. CLUFF: I'm asking just  
10 for foundation.  
11 That's not in the tab?  
12 MR. NICHOLAS: No.  
13 MR. CLUFF: That's not in  
14 the spreadsheet?  
15 MR. MAHADY: It's in the  
16 spreadsheet and there's a summary.  
17 MR. NICHOLAS: There were --  
18 MR. PIFKO: That's what I'm  
19 asking, it was in the spreadsheet.  
20 MR. NICHOLAS: -- four tabs.  
21 There were four tabs.  
22 MR. PIFKO: It doesn't  
23 matter --  
24 MR. NICHOLAS: There were

<p style="text-align: right;">Page 306</p> <p>1 four tabs. And you gave him the 2 wrong one. 3 MR. CLUFF: And we printed 4 all four of them. 5 MR. NICHOLAS: And you're 6 taking the wrong one -- 7 MR. CLUFF: We were prepared 8 to ask the witness further 9 questions -- 10 MR. NICHOLAS: You 11 deliberately -- 12 MR. CLUFF: You told us that 13 that was not the list. You did 14 not tell us that was not the list. 15 That's the record. 16 MR. MAHADY: You skipped the 17 first three -- 18 MR. CLUFF: You say what you 19 want. 20 MR. MAHADY: -- tabs and 21 went right to Tab 4. 22 MR. CLUFF: This is 23 discovery, Zach. 24 MR. MAHADY: If you have the</p>	<p style="text-align: right;">Page 308</p> <p>1 to get out of here. It's a 2 Saturday -- 3 MR. NICHOLAS: No, I know we 4 are going seven hours, there's no 5 question about that. We went 6 seven hours yesterday and we're 7 going seven today. 8 I'm not trying to harass -- 9 MR. PIFKO: If I go seven 10 hours, that's my right, okay? I'd 11 like to be done as soon as I can 12 as well, okay? And this time 13 arguing does not count towards the 14 record. 15 If it would make you feel 16 better, I would be happy to show 17 him the other tabs. The numbers 18 he discussed are the numbers. 19 That's the fact. 20 MR. NICHOLAS: I'm not -- 21 MR. PIFKO: So it doesn't 22 make any difference. 23 MR. NICHOLAS: -- saying 24 anything about the numbers. I'm</p>
<p style="text-align: right;">Page 307</p> <p>1 other three, show him the list. 2 If you have the other three tabs, 3 show him the other three tabs. 4 MR. CLUFF: You are free to 5 show him the other tabs. We asked 6 him a line of questions about the 7 tab that we wanted to talk about 8 to begin with. 9 His testimony was that was 10 the tab, when he was asked, of the 11 customers. 12 MR. NICHOLAS: You poisoned 13 the record. 14 MR. PIFKO: No, you did, 15 okay? 16 MR. NICHOLAS: You poisoned 17 the record. You guys poisoned the 18 record by deliberately giving him 19 the wrong thing. 20 MR. PIFKO: If it makes you 21 feel better, I will hand him the 22 other tabs. I was honestly trying 23 to be quick. You've mentioned on 24 multiple occasions that you want</p>	<p style="text-align: right;">Page 309</p> <p>1 talking about this BS display that 2 you made to the jury. 3 MR. PIFKO: That's not -- do 4 you agree or disagree that that is 5 a document that was attached to 6 that e-mail? Did we misrepresent 7 that that's part of the e-mail, 8 that that's part of the 9 attachment? 10 MR. NICHOLAS: Mark, there's 11 an unlimited number of documents 12 in the world, you can throw to 13 someone. So what? You have -- 14 MR. PIFKO: Is that -- 15 MR. NICHOLAS: You gave him 16 the wrong document. And you did 17 it on purpose. 18 MR. PIFKO: Is that a 19 document that was attached from 20 that spreadsheet; yes or no? 21 MR. NICHOLAS: It's the 22 wrong spreadsheet, as you well 23 know. 24 MR. CLUFF: It's not the</p>

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1 wrong spreadsheet.  
2 MR. PIFKO: No, it's not the  
3 wrong spreadsheet.  
4 MR. NICHOLAS: It's the  
5 wrong part of the spreadsheet,  
6 which you knew.  
7 MR. PIFKO: It's part of the  
8 spreadsheet --  
9 MR. NICHOLAS: Look, guys,  
10 you do you agree that this list of  
11 13,000 -- 13,000 files is not the  
12 list of the 3,000 you were asking  
13 him about?  
14 MR. PIFKO: You  
15 completely --  
16 MR. NICHOLAS: Right?  
17 MR. PIFKO: You  
18 completely --  
19 MR. NICHOLAS: You know  
20 this, why don't you just correct  
21 the record?  
22 MR. PIFKO: You completely  
23 bungled the attempt to correct the  
24 record by disclosing all of this

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1 in front of the witness.  
2 MR. NICHOLAS: I don't think  
3 so, Mark.  
4 MR. PIFKO: Yes, you did.  
5 We could have fixed it. But you  
6 screwed it all up, and now we  
7 can't do it because you disclosed  
8 it in front of the witness.  
9 MR. NICHOLAS: We can fix  
10 it. You can --  
11 MR. PIFKO: No.  
12 MR. NICHOLAS: It's very  
13 easy to fix. You show him the  
14 correct -- show him the correct  
15 spreadsheets, and you say, I  
16 showed you the wrong spreadsheet  
17 before, I'd like --  
18 MR. PIFKO: Again, now  
19 you're telling him what to say.  
20 You're walking us through the  
21 conversation in front of the  
22 witness.  
23 MR. NICHOLAS: No, no, no.  
24 I'm telling you what to say, so

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1 you make an honest record.  
2 You're big on let's have a  
3 clean record, let's get answers to  
4 questions.  
5 MR. PIFKO: I am.  
6 MR. NICHOLAS: Do you want  
7 real answers?  
8 MR. PIFKO: Your witness has  
9 been dodging the questions all  
10 day.  
11 MR. NICHOLAS: Do you want  
12 straight stuff or not?  
13 MR. PIFKO: I do.  
14 MR. NICHOLAS: Do you want  
15 to be straight or not?  
16 MR. PIFKO: I do.  
17 MR. NICHOLAS: This is  
18 not --  
19 MR. PIFKO: I do want to be  
20 straight.  
21 MR. NICHOLAS: -- playing it  
22 straight. This is not just  
23 playing it straight, guys, and you  
24 know it.

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1 MR. PIFKO: We're going to  
2 move on.  
3 MR. NICHOLAS: So you're not  
4 going to do anything? You're not  
5 going to correct the record?  
6 MR. PIFKO: I'm going to  
7 move on and ask the questions that  
8 I want to ask. This is my  
9 deposition.  
10 BY MR. PIFKO:  
11 Q. I'm handing you what is  
12 marked --  
13 MR. NICHOLAS: So for the  
14 record --  
15 BY MR. PIFKO:  
16 Q. -- Exhibit-15.  
17 MR. NICHOLAS: For the  
18 record, counsel is refusing to  
19 correct the record, knowing that  
20 it's inaccurate and knowing --  
21 MR. PIFKO: I do not have  
22 any information --  
23 MR. NICHOLAS: Knowing that  
24 he put an inaccurate document

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1 that's not only misleading, but a  
2 wrong document, in front of the  
3 witness.  
4 - - -  
5 (Whereupon,  
6 AmerisourceBergen-May Exhibit-15,  
7 Tab Printout, was marked for  
8 identification.)  
9 - - -  
10 BY MR. PIFKO:  
11 Q. Sir, I want to direct you  
12 back --  
13 MR. NICHOLAS: We reserve  
14 all rights on this.  
15 BY MR. PIFKO:  
16 Q. I want to direct you back to  
17 Exhibit-14, which was the prescriber  
18 action document that Purdue sent to  
19 AmerisourceBergen.  
20 Do you recall discussing  
21 that?  
22 A. Yes.  
23 Q. And your counsel, again,  
24 trying to influence the proceedings

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1 improperly, made some objections about  
2 whether there even was such a list.  
3 Well, I've just handed you  
4 what's marked as Exhibit-15, a copy of  
5 the list, which if you look at  
6 Exhibit-14, it says, Attachment  
7 prescriber action weekly grid.  
8 Exhibit-15 is a printout of that grid.  
9 MR. NICHOLAS: I object to  
10 the form.  
11 BY MR. PIFKO:  
12 Q. It's Bates labeled --  
13 MR. NICHOLAS: I object to  
14 the characterization.  
15 BY MR. PIFKO:  
16 Q. -- ABDCMDL 00002239.  
17 MR. NICHOLAS: What's your  
18 question?  
19 BY MR. PIFKO:  
20 Q. Take your time to review the  
21 document, sir.  
22 MR. NICHOLAS: So we don't  
23 have a repetition of what happened  
24 last time, in case anyone asks the

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1 witness to hold this up --  
2 MR. PIFKO: Stop making false  
3 accusations.  
4 MR. NICHOLAS: In case  
5 anyone asks the witness to hold up  
6 this stack of paper, half of it is  
7 blank. Half of these page are  
8 blank.  
9 BY MR. PIFKO:  
10 Q. Have you seen this -- have  
11 you seen this document before,  
12 Exhibit-15?  
13 A. I'm not familiar with this  
14 document.  
15 Q. You were -- you did receive  
16 the e-mail attaching it, correct? We  
17 established that earlier?  
18 MR. NICHOLAS: Object to the  
19 form. You're representing that  
20 this was attached to the e-mail.  
21 He just said he's never seen the  
22 document.  
23 MR. PIFKO: Again, you're  
24 coaching the witness.

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1 MR. NICHOLAS: No, now I  
2 have to be this way because of  
3 what you did the last time with  
4 that stack of documents that was  
5 so inaccurate. Now I have no  
6 choice.  
7 MR. PIFKO: You have no right  
8 to be this way. You're coaching  
9 the witness. You've been doing it  
10 yesterday and today.  
11 MR. NICHOLAS: No, I --  
12 MR. PIFKO: All day long.  
13 MR. NICHOLAS: -- really  
14 haven't.  
15 MR. PIFKO: Yes, you have.  
16 MR. NICHOLAS: No, I  
17 haven't.  
18 THE WITNESS: So I have this  
19 list in front of me. I don't  
20 recognize this list. I see there  
21 was an attachment on the e-mail  
22 sent to me. I don't recall  
23 specifically opening the  
24 attachment, but I don't recall not

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1 opening the attachment.  
2 MR PIFKO: Clearly, your  
3 counsel has influenced your  
4 testimony. And that is wholly  
5 inappropriate.  
6 Move to strike that  
7 response.  
8 BY MR. PIFKO:  
9 Q. You talk --  
10 MR. NICHOLAS: Object to the  
11 form.  
12 BY MR PIFKO:  
13 Q. You talk, in the --  
14 MR. NICHOLAS: Object to the  
15 form.  
16 BY MR PIFKO:  
17 Q. -- in Exhibit-14 about, We  
18 could add this to our due diligence list  
19 on the S drive.  
20 Do you see that?  
21 A. I do.

[REDACTED]

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[REDACTED]

Page 320

[REDACTED]

Page 321

[REDACTED]



Page 322

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 BY MR PIFKO:  
13 Q. Okay. Thank you.  
14 MR. NICHOLAS: Can you ask  
15 him to hold that list up in  
16 contrast to the one --  
17 MR. PIFKO: I'm not going to  
18 ask him --  
19 MR. NICHOLAS: -- you  
20 mistakenly held up.  
21 MR PIFKO: You're trying to  
22 testify for him, stop.  
23 MR. NICHOLAS: No, you said  
24 you wanted --

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1 MR PIFKO: Stop.  
2 MR. NICHOLAS: You said you  
3 wanted --  
4 MR. PIFKO: I asked him if  
5 there was anything he wanted to  
6 do, and now you're trying to tell  
7 him what to do. Stop.  
8 MR. NICHOLAS: You said you  
9 wanted to correct the record.  
10 MR. PIFKO: I asked him -- I  
11 gave him a full opportunity.  
12 MR. NICHOLAS: You said you  
13 wanted to correct it.  
14 MR. PIFKO: I'm moving on.  
15 MR. NICHOLAS: Do you want  
16 to correct it or not? Ask him to  
17 hold them both up.  
18 MR PIFKO: You're coaching  
19 him. No.  
20 MR. NICHOLAS: I'm not  
21 coaching him. I'm asking him to  
22 hold -- you asked him to hold up  
23 something and I'm asking him to  
24 hold up something.

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1 MR PIFKO: You need to stop  
2 talking. Seriously, we're going  
3 to go to court on you.  
4 MR. NICHOLAS: If we go to  
5 court on this, that's probably  
6 something you want to do.  
7 MR. PIFKO: I feel fine.  
8 I've done nothing wrong.  
9 MR. NICHOLAS: Doubt it.  
10 - - -  
11 (Whereupon,  
12 AmerisourceBergen-May Exhibit-19,  
13 ABDCMDL 00159841, was marked for  
14 identification.)  
15 - - -  
16 MR PIFKO: I want to make  
17 one other comment about that  
18 document. It also had hidden tabs  
19 that our review team had to --  
20 hidden columns in the spreadsheet  
21 that our review team had to  
22 unhide.  
23 So your production of the  
24 document was not a fair production

<p style="text-align: right;">Page 326</p> <p>1 that allowed us to review it in a</p> <p>2 proper way.</p> <p>3 MR. MAHADY: It was produced</p> <p>4 in a native format.</p> <p>5 MR. NICHOLAS: It was</p> <p>6 produced --</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. I'm handing you --</p> <p>9 MR. NICHOLAS: -- the way it</p> <p>10 was supposed to be produced, which</p> <p>11 was in native format.</p> <p>12 BY MR PIFKO:</p> <p>13 Q. I've handed you what has</p> <p>14 been marked as Exhibit-19. It's a</p> <p>15 PowerPoint presentation marked ABDCMDL</p> <p>16 00159841. I'll represent to you that the</p> <p>17 metadata from that document states that</p> <p>18 you are the custodian. It's a file</p> <p>19 called CSRA Diversion Control General</p> <p>20 Awareness Training, Draft. And the</p> <p>21 document is dated April 20th, 2016.</p> <p>22 Please review that and let</p> <p>23 me know when you're done.</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 328</p> <p>1 presentation?</p> <p>2 A. I do generally recall.</p> <p>3 Q. I want to direct your</p> <p>4 attention to Page 4, which is also Slide</p> <p>5 4.</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me what this</p> <p>8 slide reflects?</p> <p>9 A. Again, this was an effort by</p> <p>10 me to sensitize the compliance managers</p> <p>11 to certain data relative to the opioid</p> <p>12 problem.</p> <p>13 Q. Why did you want to</p> <p>14 sensitize them to this data?</p> <p>15 A. General awareness training</p> <p>16 for diversion.</p> <p>17 Q. Why would you want to make</p> <p>18 them aware of this information?</p> <p>19 MR. NICHOLAS: Object to the</p> <p>20 form. Asked and answered.</p> <p>21 THE WITNESS: Again, it was</p> <p>22 a diverse group of people, and I'm</p> <p>23 not sure of everyone's level of</p> <p>24 knowledge relative to some of the</p>
<p style="text-align: right;">Page 327</p> <p>1 Q. Have you seen this document</p> <p>2 before?</p> <p>3 A. Yes.</p> <p>4 Q. This is a presentation that</p> <p>5 you made?</p> <p>6 A. Yes.</p> <p>7 Q. What was this for?</p> <p>8 A. To the best of my</p> <p>9 recollection, this was to our compliance</p> <p>10 managers during our annual training</p> <p>11 process for compliance managers. And we</p> <p>12 held this training conference at our</p> <p>13 corporate headquarters.</p> <p>14 Q. And this is -- do you agree</p> <p>15 that this presentation was made in April</p> <p>16 2016, as it states here?</p> <p>17 A. Correct.</p> <p>18 I guess the only caveat here</p> <p>19 is, you mentioned that it said draft.</p> <p>20 There may have been a final copy of this.</p> <p>21 But, generally, that would represent</p> <p>22 here, in draft form, at least, what I</p> <p>23 presented.</p> <p>24 Q. Do you recall making this</p>	<p style="text-align: right;">Page 329</p> <p>1 issue, in a very general way.</p> <p>2 So it's just my attempt to</p> <p>3 provide information, share</p> <p>4 information and educate and inform</p> <p>5 people.</p> <p>6 BY MR PIFKO:</p> <p>7 Q. As the head of the diversion</p> <p>8 control division, you wanted other people</p> <p>9 in the company to be aware of the</p> <p>10 diversion and prescription drug abuse</p> <p>11 statistics that are provided here --</p> <p>12 MR. NICHOLAS: Objection.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. -- is that correct?</p> <p>15 MR. NICHOLAS: Object to the</p> <p>16 form of that question.</p> <p>17 THE WITNESS: Again, my</p> <p>18 response is the entire</p> <p>19 presentation was intended to --</p> <p>20 again, General Awareness was the</p> <p>21 title.</p> <p>22 And not knowing everyone's</p> <p>23 level of information relative to</p> <p>24 diversion control, and even some</p>



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1 of the things that we do in the  
2 diversion control team versus  
3 maybe some of their  
4 responsibilities at the  
5 distribution center, it's an  
6 effort to educate and inform  
7 everybody.  
8 BY MR PIFKO:  
9 Q. What does this timeline  
10 reflect on this slide?  
11 MR. NICHOLAS: Object to the  
12 form.  
13 BY MR PIFKO:  
14 Q. While you're reviewing it,  
15 on the left of the timeline, it says,  
16 1983, Vicodin becomes available as a  
17 generic.  
18 1986, published paper  
19 concludes that opioid pain killers could  
20 be prescribed safely on a long-term  
21 basis.  
22 1995, OxyContin receives  
23 approval from FDA. American Pain Society  
24 introduces a campaign entitled, quote,

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1 Pain is the Fifth Vital Sign, end quote.  
2 1996, Purdue Pharma begins  
3 multiyear educational programs promoting  
4 long-term use of opioid pain killers.  
5 2000s, physicians expand  
6 their treatment of pain through use of  
7 the growing number of approved  
8 prescription opioids. Prescription pain  
9 killers flood the market.  
10 2014, four times annual  
11 increase in prescriptions from 1999 to  
12 2014. Five times annual increase in  
13 overdose deaths related to opioids.  
14 Did I read that correctly?  
15 A. You did.  
16 Q. What is this timeline  
17 intended to reflect?  
18 MR. NICHOLAS: Object to the  
19 form. You just read it.  
20 THE WITNESS: So this  
21 timeline -- I can't tell you the  
22 source. I acquired it from  
23 somewhere, some sort of public  
24 document. And I inserted it in

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1 here as part of the training  
2 program.  
3 BY MR PIFKO:  
4 Q. What did you want people to  
5 see when you -- by putting this in here?  
6 What were you trying to communicate?  
7 MR. NICHOLAS: Object to the  
8 form. You just read it.  
9 THE WITNESS: The timeline  
10 represents certain information  
11 relative to the opioid  
12 prescribing, with dates associated  
13 with it.  
14 And, again, other than it  
15 offering background and a timeline  
16 and information relative to dates,  
17 it was intended to be educational.  
18 That was my intent.  
19 BY MR PIFKO:  
20 Q. Is it intended to educate  
21 people about the relevant milestones with  
22 respect to the opioid crisis, agree?  
23 MR. NICHOLAS: Objection to  
24 the form of the question.

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1 THE WITNESS: And, again,  
2 going back to my related response,  
3 all of this was intended to be  
4 general training and information  
5 purposes for our compliance  
6 managers around the issue of  
7 opioids.  
8 BY MR PIFKO:  
9 Q. Right. And this timeline --  
10 by showing this timeline, you were  
11 intending to educate people of the  
12 relevant milestones with respect to the  
13 opioid crisis; is that correct?  
14 MR. NICHOLAS: Object to the  
15 form of the question. Asked and  
16 answered at least twice.  
17 THE WITNESS: Again, it  
18 was -- I had no specific goal  
19 relative to the content or the  
20 dates. It was part of general  
21 awareness training, sharing that  
22 information that I saw, as well as  
23 all this other information as part  
24 of the general awareness training.

<p style="text-align: right;">Page 334</p> <p>1 I did not have a specific  2 objective in mind with sharing  3 this particular part of the  4 training, beyond my general  5 awareness and education intent.  6 BY MR PIFKO:  7 Q. Let's go to the next page,  8 Page 5.  9 This slide says, Causes,  10 with a subheading, Driving factors behind  11 diversion and prescription drug abuse.  12 Can you tell me what's  13 reflected here?  14 A. Again, information that I've  15 gathered through my own experience and  16 exposure to various data and stories and  17 content. I put together this general  18 PowerPoint bullet/slide.  19 Q. And it's your view that  20 these are driving factors behind  21 diversion and prescription drug abuse; is  22 that correct?  23 MR. NICHOLAS: Object to the  24 form.</p>	<p style="text-align: right;">Page 336</p> <p>1 Q. What's reflected here?  2 MR. NICHOLAS: Object to the  3 form.  4 THE WITNESS: I would rely  5 upon the description here. Again,  6 this was -- this was content,  7 public content, that I took from  8 somewhere and put it on this  9 slide.  10 I see 2016 PDMP report on  11 the bottom. I'm not sure why it  12 would say that if they're talking  13 about -- if it purports to be  14 national rates. I'm not sure,  15 quite frankly.  16 I would rely upon what's on  17 there as --  18 BY MR PIFKO:  19 Q. This chart shows sales of  20 opioids -- what does it show, do you  21 know?  22 MR. NICHOLAS: Object to the  23 form. And I'll object to the  24 scope of this line of questioning</p>
<p style="text-align: right;">Page 335</p> <p>1 THE WITNESS: These are some  2 of the factors behind diversion  3 and prescription drug abuse.  4 BY MR PIFKO:  5 Q. You don't have any actions  6 committed by distributors here; is that  7 correct?  8 MR. NICHOLAS: Object to the  9 form.  10 But go ahead.  11 THE WITNESS: I do not.  12 BY MR PIFKO:  13 Q. Let's go to the next slide.  14 It says, Trends, diversion  15 and substance abuse statistics.  16 Do you see that?  17 A. I do.  18 Q. And then it's got a chart,  19 Prescription painkiller sales and  20 age-adjusted rates for drug poisoning  21 deaths by drug -- by type of drug, United  22 States, 2000 to 2014.  23 Do you see that?  24 A. I do.</p>	<p style="text-align: right;">Page 337</p> <p>1 in general.  2 THE WITNESS: Again, I'm  3 just looking at the title,  4 Prescription Painkiller Sales and  5 Age-Adjusted Rates For Drug  6 Poisoning Tests By Type of Drug.  7 But it doesn't really give  8 you by type of drug, other than  9 saying opioid analgesics versus  10 heroin deaths, and then sales.  11 So, again, it's a little bit  12 hard to decipher at this point. I  13 probably, at the time of the  14 presentation, was more familiar  15 with where it was derived from and  16 could speak to it. But at this  17 point --  18 BY MR PIFKO:  19 Q. Let's go to the next page,  20 Slide 7.  21 The slide says, What is  22 diversion control.  23 Correct?  24 A. Yes.</p>

<p style="text-align: right;">Page 338</p> <p>1 Q. And the speaker notes on the</p> <p>2 bottom, it says, So what is diversion?</p> <p>3 In my own words, diversion is any</p> <p>4 activity, including negligence, which</p> <p>5 results in a prescription drug being</p> <p>6 removed from its intended, legitimate</p> <p>7 medical use. Diversion can take place</p> <p>8 anywhere along the closed system path,</p> <p>9 from manufacturer, to distributor,</p> <p>10 prescriber, dispenser and end user.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Do you agree with that?</p> <p>14 MR. NICHOLAS: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: Again --</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 scope as well.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: I do agree</p> <p>21 with it, in terms of it -- of the</p> <p>22 definition.</p> <p>23 But I do want to point out</p> <p>24 it's in my own words. You know,</p>	<p style="text-align: right;">Page 340</p> <p>1 Q. Do you agree with that</p> <p>2 statement?</p> <p>3 MR. NICHOLAS: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: I agree to</p> <p>6 that statement at that time and,</p> <p>7 presumably, I did the -- my own</p> <p>8 due diligence before I included a</p> <p>9 statement like that at that time.</p> <p>10 BY MR PIFKO:</p> <p>11 Q. The speaker notes below say,</p> <p>12 And what's being diverted? The biggest</p> <p>13 threat for diversion continues to be</p> <p>14 opioids. Unfortunately, these drugs have</p> <p>15 very addictive qualities. So it happens</p> <p>16 frequently that you will see someone who</p> <p>17 was prescribed hydrocodone following an</p> <p>18 injury or medical intervention for</p> <p>19 legitimate medical purposes, but then</p> <p>20 continues to abuse and abuse the drug --</p> <p>21 use and abuse the drug long after the</p> <p>22 legitimate medical need has passed.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 339</p> <p>1 words, it should be. It says "in</p> <p>2 my own words" there, but it's my</p> <p>3 own words.</p> <p>4 So this was my, kind of</p> <p>5 off-the-top-of-my-head definition.</p> <p>6 BY MR PIFKO:</p> <p>7 Q. But you believe this to be</p> <p>8 true?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form. Object to the scope. Asked</p> <p>11 and answered.</p> <p>12 THE WITNESS: I generally</p> <p>13 believe this to be true, yes.</p> <p>14 BY MR PIFKO:</p> <p>15 Q. Let's go to the next page.</p> <p>16 The heading of the slide is,</p> <p>17 Commonly Diverted Drugs.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And it says, Misuse of pain</p> <p>21 killers represents three-quarters of</p> <p>22 overall prescription drug abuse.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p>	<p style="text-align: right;">Page 341</p> <p>1 Q. Did I read that correctly?</p> <p>2 A. Yes. I used that more than</p> <p>3 once, that example.</p> <p>4 Q. I was going to say, we saw</p> <p>5 that in another one of your presentations</p> <p>6 earlier, right?</p> <p>7 A. Yes.</p> <p>8 Q. And you agree with that</p> <p>9 statement?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I generally</p> <p>13 agree that could be one example of</p> <p>14 how abuse could take place.</p> <p>15 - - -</p> <p>16 (Whereupon,</p> <p>17 AmerisourceBergen-May Exhibit-20,</p> <p>18 ABDCMDL 00142341-345, was marked</p> <p>19 for identification.)</p> <p>20 - - -</p> <p>21 BY MR PIFKO:</p> <p>22 Q. I'm handing you what is</p> <p>23 marked as Exhibit-20.</p> <p>24 Take a moment to review that</p>

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1 and let me know when you're done.  
2 For the record, Exhibit-20  
3 is Bates labeled ABDCMDL 00142341 through  
4 2345.  
5 MR. NICHOLAS: I'm going to  
6 interpose an objection to the  
7 questioning on this document on  
8 two grounds, before we proceed.  
9 The first is that it appears  
10 to pertain to a pharmacy and  
11 information that is not contained  
12 in the Track 1 jurisdictions. It  
13 looks like it's a Pennsylvania  
14 situation.  
15 And, secondly, which takes  
16 us out of his, I believe, the  
17 30(b)(6) testimony. And to the  
18 extent you're asking him  
19 individual questions, he's not on  
20 large portions of this document.  
21 He's not copied on large portions  
22 of this document.  
23 So for those two reasons, I  
24 object to the use of the document.

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1 BY MR. PIFKO:  
2 Q. Are you done reviewing it?  
3 A. Yes, yes.  
4 Q. Do you know what this  
5 document is?  
6 A. It's an e-mail string.  
7 Q. I just wanted to ask you a  
8 simple question about this document.  
9 If you'd go to the second  
10 page, ABDCMDL 00142342.  
11 Are you there?  
12 A. Yes.  
13 Q. About a third of the way  
14 down, there's an e-mail from Eric  
15 Cherveney, dated January 17th, 2017, at  
16 6:02 p.m.  
17 Do you see that?  
18 A. Yes.  
19 Q. He says, I don't see the  
20 need to order a dispensing report here  
21 due to their extreme low volume and high  
22 controls. They're clearly using us as  
23 secondary for controls.  
24 Do you see that?

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1 A. I do.  
2 Q. Do you have an understanding  
3 about what's being discussed there?  
4 MR. NICHOLAS: Objection for  
5 the reasons I stated in my prior  
6 objection.  
7 THE WITNESS: So I'm happy  
8 to talk about this a little bit.  
9 It's always a little bit difficult  
10 when addressing specific  
11 customers. But I think I can talk  
12 a little bit about the theme here.  
13 BY MR. PIFKO:  
14 Q. And that's what I'm trying  
15 to get at.  
16 A. And so, I guess, to this  
17 commentary here, one of the challenges  
18 that we face, as a wholesale distributor,  
19 is the lack of visibility, in terms of  
20 customers who are utilizing two, three,  
21 four different distributors.  
22 And there are times when we  
23 can see, simply from the data, and  
24 it's -- again, I'm going to speak

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1 generally here, because you can't even  
2 read the volumes on this first page. But  
3 simply from the data, it becomes clear  
4 that the customer is using us for the  
5 purchase of controls versus their total  
6 purchasing, which may be a perfectly  
7 legitimate reason by the pharmacy. If  
8 I'm an independent pharmacist and I can  
9 buy and shop among three or four  
10 distributors and get controls at certain  
11 prices, then they're going to do that.  
12 That's perfectly legitimate.  
13 Sometimes it's not  
14 legitimate. Sometimes we're being used  
15 to supplement other purchasing where a  
16 pharmacy may have a distributor that is  
17 holding them to certain levels.  
18 And so that's a general  
19 challenge that we face as a wholesale  
20 distributor. And so what is the -- how  
21 do we handle those situations? And,  
22 again, in speaking generally, when the  
23 data is very apparent that the customer  
24 is using us just to purchase controls,

<p style="text-align: right;">Page 346</p> <p>1 well, we may just make the decision, hey,  2 you know, we're not going to assume all  3 that risk, even though you may have a  4 legitimate reason for doing so, it  5 doesn't make sense for us to assume all  6 that risk. So you know what, we're just  7 going to terminate the relationship with  8 you.</p> <p>9 And we would just send them  10 a letter to say that, you know -- and we  11 would provide them that reason, that  12 we're not going to assume risk on a  13 secondary basis here.</p> <p>14 And so that's a general  15 theme. And without seeing, before and  16 after, what occurred here, that's my  17 general theme explanation.</p> <p>18 Q. That's helpful. Thank you.  19 That's what I was getting at.</p> <p>20 So I understand a little bit  21 more, when you talk about this risk, I  22 completely understand that you don't know  23 for sure what the reason is, there could  24 be a legitimate reason.</p>	<p style="text-align: right;">Page 348</p> <p>1 a case-by-case basis, not knowing  2 the complete context there.</p> <p>3 And when the data is evident  4 to us that it's a secondary  5 situation and there's risk  6 involved relative to the  7 customer's activity, we may make  8 the decision we're not even going  9 to pursue the relationship any  10 longer, for the sheer fact that  11 there's risk involved with the  12 customer. And we would make that  13 decision.</p> <p>14 I'm not sure that that  15 ultimately was the case here.</p> <p>16 That's --</p> <p>17 BY MR PIFKO:  18 Q. We can put that aside.  19 When you talk about that  20 risk, what do you mean? What kind of  21 risk do you mean?</p> <p>22 MR. NICHOLAS: Object to the  23 form. And scope.  24 THE WITNESS: So the data,</p>
<p style="text-align: right;">Page 347</p> <p>1 But the risk is that there's  2 a potential illegitimate reason that  3 maybe they're -- someone else had a  4 threshold for them and they've gotten to  5 it, and they're coming to you to get  6 more.</p> <p>7 And that's the concern that  8 potentially that could be happening; is  9 that correct?</p> <p>10 MR. NICHOLAS: Object to the  11 form.</p> <p>12 THE WITNESS: Yes. There is  13 a concern that they could be  14 getting controls from multiple  15 sources.</p> <p>16 BY MR PIFKO:  17 Q. And as of 2017, when this  18 e-mail was written, that's not a risk  19 that the company wanted to take on, like  20 you said?</p> <p>21 MR. NICHOLAS: Object to the  22 form.</p> <p>23 THE WITNESS: Again, we  24 handle these similar scenarios on</p>	<p style="text-align: right;">Page 349</p> <p>1 in and of itself, presents a red  2 flag. Because you have a  3 customer, like in this case, has a  4 high percentage of controls.  5 That's risk. And that -- because  6 of that risk, we may make that  7 decision.</p> <p>8 BY MR PIFKO:  9 Q. When you say "red flag,"  10 that's a red flag for diversion, like we  11 saw in the presentation?</p> <p>12 MR. NICHOLAS: Object to the  13 form.</p> <p>14 THE WITNESS: There are  15 several red flags that we monitor  16 for, that we investigate. I don't  17 believe I said for diversion, I  18 believe I said there's just red  19 flags relative to their ordering  20 activity that we investigate, if I  21 recall correctly.</p> <p>22 BY MR PIFKO:  23 Q. But I was just trying to  24 understand, is a red flag indicia of what</p>



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1 something that gives rise -- your  
2 division is diversion control?  
3 MR. NICHOLAS: Hold on. Is  
4 that a question? It isn't a  
5 question yet.  
6 BY MR PIFKO:  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 MR PIFKO: We can take a  
24 break.

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1 VIDEO TECHNICIAN: Going off  
2 the record. 4:35 p.m.  
3 - - -  
4 (Whereupon, a brief recess  
5 was taken.)  
6 - - -  
7 VIDEO TECHNICIAN: We're  
8 back on record at 4:48 p.m.  
9 BY MR PIFKO:  
10 Q. Can you get Exhibits-16 and  
11 18 and 17 and 13 in front of you again?  
12 - - -  
13 (Whereupon, a discussion off  
14 the record occurred.)  
15 - - -  
16 BY MR. PIFKO:  
17 Q. Specifically, I want you to  
18 look at 13.  
19 Can you tell me what 13 is?  
20 And you can refer, remember, this is an  
21 attachment to Exhibit-12, if you want to  
22 look at the one-page e-mail.  
23 So there's a lot of numbers  
24 in front of you. Take your time to get

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1 what you need to look at this.  
2 MR. NICHOLAS: What are you  
3 asking him?  
4 MR PIFKO: I'll get there.  
5 THE WITNESS: Okay. I have  
6 12 and I have 13.  
7 BY MR PIFKO:  
8 Q. And I want you to have 16,  
9 18 and 17 in front of you as well.  
10 A. 16, 18, and 17, okay.  
11 Things aren't very well organized over  
12 here, so.  
13 Q. Same on my side.  
14 MR. NICHOLAS: Is that what  
15 you want, 16, 17, 18 and 13?  
16 MR PIFKO: He needs to look  
17 at the official copies.  
18 MR. NICHOLAS: Then he has  
19 to find them. It's these. 16,  
20 17, 18, 13.  
21 THE WITNESS: So do I have  
22 them all together, then?  
23 So I have 12, 13, 16, 17 and  
24 18.

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1 BY MR PIFKO:  
2 Q. Do you have -- it looks  
3 like, in front of you, you just have two  
4 documents.  
5 You've got to use your  
6 copies. You've got to use the official  
7 exhibits.  
8 A. I don't have them.  
9 Q. They've got to be there  
10 somewhere. They're not those. So you  
11 can put them -- I'm not talking about --  
12 maybe they're in that stack there.  
13 A. No, I went through this  
14 already.  
15 MR. NICHOLAS: I don't care  
16 if he uses these.  
17 MR PIFKO: It's concerning  
18 to me that -- there they are.  
19 They are in front of you, Bob.  
20 Stolen exhibits.  
21 - - -  
22 (Whereupon, a discussion off  
23 the record occurred.)  
24 - - -

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[REDACTED]

Page 356

[REDACTED]

Page 355

[REDACTED]

Page 357

[REDACTED]

Page 358

[REDACTED]

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1 concluded at 4:57 p.m.)  
2 - - -  
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1 [REDACTED]  
2 MR PIFKO: I don't know if  
3 AmerisourceBergen's counsel has  
4 any questions for you, but if they  
5 do, I may have some additional  
6 questions for you.  
7 And if additional documents  
8 may be produced in this case, I  
9 may seek to call you back, at  
10 which time I would confer with  
11 AmerisourceBergen's counsel.  
12 Subject to that, I don't  
13 have any further questions of you  
14 at this time.  
15 MR. NICHOLAS: I have no  
16 questions at this time. Thank  
17 you.  
18 Thank you, Mr. May.  
19 VIDEO TECHNICIAN: This ends  
20 today's deposition. We're going  
21 off the record. The time is 4:57  
22 p.m.  
23 - - -  
24 (Whereupon, the deposition

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1 CERTIFICATE  
2  
3  
4 I HEREBY CERTIFY that the  
5 witness was duly sworn by me and that the  
6 deposition is a true record of the  
7 testimony given by the witness.  
8  
9  
10  
11 Amanda Maslinsky-Miller  
12 Certified Realtime Reporter  
13 Dated: August 7, 2018  
14  
15  
16  
17 (The foregoing certification  
18 of this transcript does not apply to any  
19 reproduction of the same by any means,  
20 unless under the direct control and/or  
21 supervision of the certifying reporter.)  
22  
23  
24



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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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E R R A T A  
- - - - -

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ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do hereby certify that I have read the foregoing pages, 1 - 360, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

DAVID MAY \_\_\_\_\_ DATE \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public \_\_\_\_\_

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LAWYER'S NOTES

PAGE LINE

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